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Supreme Court of the United States

OCTOBER TERM, 1943

No. 76

SIDNEY ARCENEAUX, PETITIONER

vs.

LOUISIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED MARCH 31, 1943
CERTIORARI GRANTED FEBRUARY 15, 1943

Supreme Court of the United States

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INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Louisiana		
Denial of writs of habeas corpus and alternatively for certiorari, mandamus and prohibition	1	1
Motion for leave to file application for writs of habeas corpus, etc.	2	2
Affidavit of Sidney Arceneaux (omitted in printing)	3	3
Affidavit of Louis Glen Fuller (omitted in printing)	4	3
Order granting filing of application for writs of habeas corpus	5	3

	Original	Print
Application for writs of habeas corpus and alternatively for certiorari, mandamus and prohibition	8	4
Exhibit A—Affidavit of Sidney Arceneaux	23	17
Exhibit B—Affidavit signed by Mayo Decou on January 26, 1962, against Sidney J. Arceneaux, filed as No. 575 with the Clerk of the Court, Parish of Lafayette, Louisiana	28	21
—Authorization to the Clerk, City Court of Lafayette, from W. E. Logan, Jr., Assistant District Attorney, to permit Mayo Decou to make a criminal charge against Sidney J. Arceneaux for vagrancy	29	23
Exhibit C—Warrant and bail order issued by Lucien C. Bertrand, Jr., Judge Ad Hoc, City Court of Lafayette, Louisiana on January 26, 1962 referring to Sidney J. Arceneaux	30	24
Exhibit D—Motion for preliminary examination, alternatively habeas corpus, and order issued on February 27, 1962, in Criminal Docket No. 14982, Fifteenth Judicial District Court, Parish of Lafayette, Louisiana	31	26
Exhibit E—Bill of Information, bearing Criminal Docket No. 14983, filed March 9, 1962	33	28
Exhibit F—Answer to motion for preliminary examination, signed by Bertrand DeBlanc, District Attorney, filed March 9, 1962 in Criminal Docket No. 14982	35	30
Exhibit G—Minute Entries of March 8 and March 9, 1962 in Criminal Docket No. 14982	36	31
Exhibit H—Letter from Attorneys, Simon & Trice to Honorable A. Wilmot Dalferes, dated March 9, 1962—Notice of intent to apply for writs	39	34
Clerk's certificate (omitted in printing)	40	34
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	41	35

[fol. 1]

IN THE SUPREME COURT OF THE STATE LOUISIANA

New Orleans

No. 46,064

STATE OF LOUISIANA

v.

SIDNEY ARCENEAUX

DENIAL OF WRITS—March 16, 1962

In re: Sidney Arceneaux applying for writs of habeas corpus and alternatively for certiorari, mandamus and prohibition

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Writ refused. There is no error of law in the ruling complained of.

/s/ WBH

/s/ JBH

/s/ FWH

/s/ EHMcC

/s/ JWS

/s/ FWS

[Clerk's Certificate to foregoing paper omitted in printing]

[fol. 2]

IN SUPREME COURT OF THE STATE OF LOUISIANA

46064

STATE OF LOUISIANA, EX REL., SIDNEY ARCENEAUX

vs.

W. E. HARSON, SHERIFF OF LAFAYETTE PARISH, LOUISIANA, and A. WILMOT DALFERES, JUDGE, FIFTEENTH JUDICIAL DISTRICT COURT

IN THE MATTER OF

State of Louisiana

vs.

Sidney Arceneaux

15th Judicial District Court
Parish of Lafayette

Cr. Docket No. 14,982

MOTION FOR LEAVE TO FILE APPLICATION FOR WRITS OF HABEAS CORPUS ETC.—

Relator moves to be permitted to file his application attached hereto without the payment of costs pursuant to the Forma Pauperis laws of the State of Louisiana and annexes hereto affidavits in support thereof.

SIMON & TRICE
301 E. Congress Street
Lafayette, Louisiana

By /s/ J. Minos Simon
Attorneys for Realtor

[fol. 3]

AFFIDAVIT OF SIDNEY ARCENEAUX

[omitted in printing]

[fol. 4]

AFFIDAVIT OF LOUIS GLENN FULLER

[omitted in printing]

[fol. 5]

ORDER GRANTING FILING OF APPLICATION FOR WRITS OF HABEAS CORPUS, ETC.—March 13, 1962

Considering the motion and affidavits attached,

IT IS ORDERED that Sidney Arceneaux be and he hereby is authorized and empowered to file the foregoing application for writs without the payment of costs or the giving of bond.

OFFICIALLY GRANTED on this 13 day of March, 1962, at New Orleans, Louisiana.

/s/ W. B. Hamlin
Associate Justice

[fols. 6-7] * * *

[fol. 8]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

Docket No. 46064

STATE OF LOUISIANA, EX REL., SIDNEY ARCENEAUX

vs.

W. E. HARSON, SHERIFF OF LAFAYETTE PARISH, LOUISIANA, and A. WILMOT DALFERES, JUDGE, FIFTEENTH JUDICIAL DISTRICT COURT

IN THE MATTER OF

State of Louisiana

vs.

Sidney Arceneaux

15th Judicial District Court
Lafayette Parish

Cr. Docket #14,982

APPLICATION FOR WRITS OF HABEAS CORPUS AND ALTERNATIVELY FOR CERTIORARI, MANDAMUS AND PROHIBITION—filed March 13, 1962

The State of Louisiana, on the relation of Sidney Arceneaux, a resident of Lafayette Parish and a citizen of the United States and of the State of Louisiana, appearing through undersigned counsel, moves for the issuance of a writ of habeas corpus directed to respondent Sheriff and respondent Judge ordering forthwith the release of relator or alternatively for writs of certiorari, mandamus and prohibition directed to respondent judge revoking

the ruling complained of whereby relator's application for writs of habeas corpus and preliminary examination was dismissed on March 9, 1962, or alternatively to show cause if any he has why said writs of certiorari, manda- [fol. 9] mus and prohibition should not issue as provided for by law and finally why relator should not be forthwith released and discharged.

JURISDICTION

The jurisdiction is conferred upon this Honorable Court by Article 7, Section 10 of the Louisiana Constitution, by R.S.15:113 and 114 and by the general supervisory jurisdiction vested in this Honorable Court and because of the constitutional issues herein raised.

STATEMENT OF THE CASE

1.

Relator is a white male born in Acadia Parish, Louisiana, on December 16, 1934; that he is one of seven children born of the marriage between Cleveland Arceneaux and Josephine Lentier. Because of the poverty and ill health of his parents at a very early age he and his two older sisters had to lend themselves as hired hands in cotton fields for the purpose of contributing to the support of his family. As a result of such circumscribing circumstances your relator was unable to attend public schools except on an average of once a week for a period of seven years and only as a result acquired a fourth grade education. Relator has no special skill and because of his lack of formal education, he has been able to eek out an existence working as a farm laborer wherever he could obtain employment, all as is more particularly shown on the annexed affidavit marked Exhibit A.

[fol. 10] 2.

In pursuance of his efforts to eek out an existence, sometimes during the month of April, 1961, he obtained employment as a farm laborer with one Meus Lagneaux, a

resident of Lafayette Parish, Louisiana, and owner of farm land therein; the terms of said employment were that said Meux Lagneaux, hereinafter sometimes referred to as employer, was to pay relator as wages the sum of Four and No/100 ($4.00) Dollars per day and to provide relator with room and board;

3.

In pursuance of said employment your relator reported for work and commenced to discharge his duties during the month of April, 1961; the room provided by said employer to relator consisted of a single room structure with approximate dimensions of eight by ten feet and the facilities therein provided for consisted only of one bed and one electric bulb. There were no bath room facilities whatever, except for the existence of one water pipe that terminated in the interior of said room with an attached faucet; the food supplied to relator consisted of two meals a day, at noon and at night, which were prepared by said employer and served to relator in employer's kitchen.

4.

Employer paid to relator his wages for the month of April, 1961, which payments were made in cash, but thereafter contrary to the terms of the employment refused and failed to pay said wages to your relator; additionally on an average of approximately twice a week, relator was given only one meal a day inasmuch as on these occasions employer and his family absented themselves from employer's residence for the night meal and [fol. 11] as a result relator went without meal, because otherwise he had no money with which to purchase something to eat;

5.

This condition of virtual peonage continued for approximately eight months, during the course of which relator repeatedly made demand for payment of his wages but employer on each occasion responded by telling relator said wages would be paid at a later date; relator further

avers that on or about January 16, 1962, while relator was still existing under the circumstances hereinabove described, employer directed relator to perform a chore not embraced by his employment and for which someone else, namely, a colored male, was receiving compensation. Relator avers that he refused to comply with the instruction of his employer, remonstrating with his said employer that the work requested was not part of his duties and furthermore that employer had failed to pay relator his wages for the performance of his regular duties and that these wages were long past due and should be immediately paid; whereupon employer summarily ordered relator to leave his premises; relator further avers that thereupon relator requested permission of his said employer to be permitted to leave his clothes in his said one room building for approximately a week while relator sought out other employment to which request employer consented but continued to refuse to pay relator's wages.

6.

Relator avers that he hitch-hiked to New Orleans to meet one of his sisters residing thereat in search of employment but because of his lack of education and experi- [fol. 12] ence and skill he was unable to obtain any employment. After a period of approximately eight days and particularly on January 25, 1962, he returned to Lafayette Parish by the same method of travel that had brought him to New Orleans and on his return chanced a meeting with the brother of one Mrs. Joseph Sonnier, who disclosed to relator that Mrs. Sonnier was in need of help in connection with the operation of a small dairy farm; whereupon relator immediately repaired to the residence of the said Mrs. Joseph Sonnier, who immediately agreed to employ your relator and requested that relator appear the following morning for the purpose of commencing his said employment.

7.

At approximately 5:00 o'clock P.M. on said date and immediately on leaving the residence of said Mrs. Joseph Sonnier, your relator went to his one room shack to gather

his clothing preparatory to reporting for work the following morning; on arrival at his said room he discovered his clothes in tack and immediately thereafter went to the residence of one Reule Breaux located approximately three miles from relator's room for the purpose of attempting to borrow $2.00 or $3.00 with which to buy food stuff. Said Breaux however advised relator he had no money on him and therefore could not lend relator the money requested; whereupon relator returned to his said room.

8.

After relator had been in his room for approximately ten minutes, four deputies of the Sheriff's office in Lafayette Parish, including among whom was one Murphy Lagneaux, son of the said employer, Meus Lagneaux, appeared at his room and advised relator that the said Meus Lagneaux had instructed them to arrest relator for tres- [fol. 13] passing on private property; thereupon said deputies took relator in their custody and placed him in a cell in the Parish Jail at Lafayette, Louisiana, where relator remains to this date.

9.

Relator is informed, believes and therefore avers that upon his arrival at the Parish Jail, said deputies met with one Earl Picard, another deputy sheriff of Lafayette Parish, who advised the said deputies that a charge of criminal trespass would not lie and after the passage of some time said Earl Picard drew up a charge of vagrancy which was finalized in the form of an affidavit signed by one Mayo Decou, another deputy sheriff of Lafayette Parish, a certified copy of which is annexed hereto and marked Exhibit B; that at the time of your relator's arrest said deputies had no legal authority whatever but on the contrary were acting in violation of the civil rights of your relator, in aresting your relator either without formal charge or without a warrant of arrest;

10.

Obviously as an afterthought, and in an effort to give some legal coloring to relator's incarceration, but which has resulted only in a perversion of the original wrongful arrest and incarceration of your relator, respondent W. E. Harson, Sheriff, acting through one of his deputies, obtained on January 26, 1962, a warrant for the arrest and incarceration of your relator, predicated on the same charge for which relator already had been in jail since the night before the issuance of the warrant for relator's arrest, a copy of which warrant is annexed hereto and marked Exhibit C.

11.

[fol. 14] Upon his incarceration relator requested permission to use a telephone for the purpose of calling an attorney, Mr. James Domengeaux of Lafayette, but in refusing to accord this request to relator respondents deputies advised relator that they did not have time and that they, said deputies, would call said attorney for relator; your relator waited several days in vain for the appearance of said attorney and consequently repeatedly renewed his request to use a telephone for the purpose of contacting said attorney and on each occasion was given the same excuse as originally given; after approximately three weeks in jail relator again requested the use of said telephone for the purpose of calling another attorney, Mr. Harold Savoie of Lafayette, Louisiana, but again in refusing said request relator was advised by said officials that they did not have time and that they would contact said counsel for relator; relator avers he renewed his request repeatedly and repeatedly was given the same response until on or about February 26, 1962, after relator had learned of the name of said counsel, relator requested the use of a telephone to call Mr. J. Minos Simon, attorney of Lafayette, Louisiana, and contrary to his previous experiences in this respect relator was immediately given permission to use said telephone which he did and as a result a conference ensued and because of relator's stark poverty and the gross injustice visited upon him the firm of SIMON AND TRICE, agreed to represent said relator without compensation;

[fol. 15] 12.

An examination of the record in this matter discloses that the filing of the charge of vagrancy on January 26, 1962, against relator, which was the day following his actual arrest and incarceration, was approved by one W. E. Logan, Jr., Assistant District Attorney of the Fifteenth Judicial District in Lafayette Parish, Louisiana; that therefore from that date forward said Assistant District Attorney received full knowledge of the charges filed against relator and of his incarceration.

13.

Irrespective of the fact that said Assistant District Attorney had full knowledge of relator's incarceration, relator was never taken before a committing magistrate, as required by R.S.15:79 and 80, nor was he ever brought before the judge who later issued the warrant, despite the command contained therein as required by Louisiana R.S.15:50 and 79, and, as a consequence, relator was not remanded for preliminary examination to determine the basis for his incarceration as required by Louisiana R.S. 15:82; that on the contrary these relator's civil rights were willfully, intentionally and knowingly repressed by the said Assistant District Attorney, the Sheriff and his deputies of Lafayette Parish, Louisiana.

14.

On February 27, 1962, relator's counsel presented to A. Wilmot Dalferes, respondent judge, an application for preliminary examination and, alternatively, for writs of habeas corpus, and respondent judge signed the order, ordering both preliminary examination and habeas corpus hearing for March 8, 1962, all as more fully appears on copy thereof annexed hereto and made part hereof, as Exhibit D.

[fol. 16] 15.

A copy of the application and order was promptly served by a deputy clerk, a person capable of giving evi-

dence, but respondent Sheriff did not make thereafter any written return as required by R.S.15:127 and 128 but appeared in Court on March 8, 1962, and in response to the habeas corpus hearing extracted from his pocket the warrant of arrest mentioned herein and identified as Exhibit C, and upon its production, even though said warrant was issued subsequent to relator's actual incarceration respondent judge summarily dismissed relator's application for habeas corpus.

16.

The Assistant District Attorney Logan then moved for a continuance, alleging verbally that he had not been served with copy of the motion and order, but not denying he had been notified or did not have knowledge, and respondent judge granted the continuance, to March 9, 1962, although the motion was not in writing, as required by R.S.15:321, and did not specify legal grounds for continuance, in that there is no requirement for service upon the District Attorney.

17.

On March 9, 1962, the District Attorney filed a bill of information against relator, copy of which is annexed hereto and marked Exhibit E, wherein relator is charged with the offense of vagrancy, in that he was found in a private place without being able to account for his lawful presence there.

[fol. 17] 18.

Said District Attorney then filed in connection with relator's preliminary examination an answer, a copy of which is annexed hereto and marked Exhibit F, wherein he alleged he had filed said bill of information that morning, and asked "that the application for a preliminary examination be denied . . ."; the "answer" does not ask that the order granting preliminary examination be revoked or recalled.

19.

Respondent judge thereupon recalled said order and denied relator the right to preliminary examination, to which relator objected and reserved a bill of exception, the ruling of said judge and the objection having been transcribed, a copy of said transcription being annexed hereto and marked Exhibit G.

20.

As shown therein, relator's objections were substantially as follows:

a. Respondent judge was granting relief not requested in the State's answer;

b. Inasmuch as there had been no indictment found or information filed when relator applied for preliminary examination, he had an absolute right, under R.S.15:154 to obtain preliminary examination, and the filing of a bill of information on the date set for preliminary examination could not be given retroactive effect, so as to accord the court any discretion.

c. Even if the court now had discretion, the preliminary examination should continue because relator had been imprisoned for six weeks for an alleged act of vagrancy, was financially destitute and could not make bail, and had no hope of trial for at least another month.

d. The entire circumstances denied him his right to a speedy trial, in violation of the Constitutions and statutes of the United States and the State of Louisiana.

[fol. 18] e. The bill of information charged no criminal offense, and if it did set forth an alleged offense in the language of a statute, then such statute and the bill of information are unconstitutional, null and void, being violative of both Federal and State Constitutions.

21.

Relator additionally avers that the Louisiana law which would require relator to stand trial for the offense alleged

before a judge alone is contrary to the guarantee of trial by jury contained in the United States Constitution.

22.

Relator further avers that the penalty that might be imposed upon him in the event of conviction would not suffice to give him right of appeal to this Honorable Court under Article 7, Section 10 of the Louisiana Constitution, and he would then have no right of appeal to any court; that denial of appeal alone is violative of the Federal Constitution, and is particularly a denial of due process; that under said Article this Honorable Court may review criminal appeals on questions of law alone; that under Article 7, Section 83 of the Louisiana Constitution, one convicted and sentenced for vagrancy in the Parish of Orleans has a right of appeal, on both facts and law, to an appellate division of the criminal district court, while elsewhere in Louisiana such person has no right of any appeal whatsoever; and that such distinction deprives relator and others similarly situated of equal justice as well as due process, and is in violation of the United States Constitution.

[fol. 19]

23.

Consequently, relator avers that he cannot be tried for the offense alleged except in violation of his constitutional rights.

24.

Relator avers that his initial arrest and incarceration were procured and effected not only without legal authority but solely for the purpose of intimidating your relator in an effort to discourage and dissuade your relator from further pursuing his demand for wages against his said employer; that his said arrest and incarceration were procured and effected by the combined and concerted efforts of said employer, his son, who at the time and currently is a duly appointed deputy sheriff, and three other deputies of respondent Sheriff while acting under color of law and solely for the purpose of depriving

your relator of his liberty and ultimately to deprive him of his wages.

25.

Said illegal incarceration and consequent deprivation of your relator's liberty has been continued and currently is being perpetuated as a result of the combined and conserted efforts of respondent Sheriff, the aforesaid deputies, and W. E. Logan and Bertrand DeBlanc; that on the face of the record it is obvious that the bill of information filed by the District Attorney was filed solely in an effort to deprive relator of his legal rights to a preliminary examination hearing and to further continue to deprive relator of his liberty, inasmuch as said District Attorney and his assistants have had knowledge of relator's incarceration since January 26, 1962, and never until the [fol. 20] morning of March 9, 1962, the scheduled date for the hearing for said preliminary examination, did said District Attorney see fit or feel justified to file a bill of information against your relator.

26.

Your relator's arrest and incarceration and continued incarceration were procured and continue to be sustained in violation of his constitutional and civil rights, to-wit:

a. His arrest without a warrant was in violation of R.S.15:59, 60;

b. His right to be immediately brought before a committing magistrate after his arrest was denied in violation of R.S.15:79, 80;

c. His right to a preliminary examination was summarily denied in violation of R.S.15:155 et seq.;

d. He is being denied of a speedy trial in violation of his constitutional rights under the State Constitution and his rights under the Fourteenth Amendment to the United States Constitution;

e. He is being denied of his liberty as a result of a conspiracy among officers acting under color of law;

f. The refusal of the Court to grant him a hearing operates to deprive relator of constitutional due process and equal protection.

27.

Relator is a pauper inasmuch as he has no property or means wherewith to pay costs of these proceedings; further he has no adequate remedy by appeal in that he has no appeal whatever from the ruling complained of; further because of his impoverished condition he is unable to post bond for his release from jail and unless he is granted the relief herein requested, he will have to remain in jail for an indefinite period of time.

[fol. 21] 28.

Relator has notified respondent judge of his intent to apply to your Honors for writs, a copy of which notice is annexed hereto and marked Exhibit H.

WHEREFORE, it is prayed that a writ of habeas corpus issue, directed to respondent Sheriff, W. E. Harson, commanding him to produce Sidney Arceneaux before this Honorable Court, and after due proceedings that relator be ordered released from custody.

It is further prayed, in the alternative, that writs of certiorari and prohibition issue to A. Wilmot Dalferes, respondent judge, in order that this Honorable Court may rule upon the constitutionality of R.S.14:107 (8), and whether said statute, and R.S.15:340, Article 7, Section 42, and Article 7, Section 10 of the Louisiana Constitution, insofar as Section 10 relates to criminal appeals, (Article 10, Section 83 being considered therewith), are contrary to and violative of the provisions of the United States Constitution, and in particular the Fifth, Sixth and Fourteenth Amendments thereto.

It is further prayed, unless writ of habeas corpus issue herein, that writ of mandamus issue to said respondent judge, commanding him forthwith and without delay to recall his order of March 9, 1962 relating to denial of preliminary examination and that he proceed at once to conduct such preliminary examination.

[fol. 22] Relator further prays to be permitted to file and pursue these proceedings without the payment of costs or the giving of bond as security therefor.

SIMON & TRICE
301 E. Congress Street
Lafayette, Louisiana

By /s/ J. Minos Simon

STATE OF LOUISIANA

PARISH OF LAFAYETTE

BEFORE ME, the undersigned authority in and for the State and Parish aforesaid, personally came and appeared J. MINOS SIMON, who, being first duly sworn, did depose and say that he is of counsel for relator in the above and foregoing application, that he has read same and the allegations therein contained are true and correct to the best of his knowledge, information and belief, and that a copy has been duly mailed to Honorable A. Wilmot Dalferes and to Honorable W. E. Harson, made respondents therein.

/s/ J. Minos Simon

SWORN TO AND SUBSCRIBED before me on this 12th day of March, 1962.

/s/ William J. Frazer
Notary Public

[fol. 23] EXHIBIT A TO APPLICATION

STATE OF LOUISIANA

PARISH OF LAFAYETTE

SIDNEY ARCENEAUX, being first duly sworn according to law, did depose and say that:

My name is Sidney Arceneaux. I was born in Acadia Parish, Louisiana, on December 16, 1934 of the marriage between Cleveland Arceneaux and Josephine Lentier. I also have six sisters born of this marriage. I only have a fourth grade education. When I was young my father was crippled and my mother was ill and as a result my two older sisters and I had to work in the fields to help support the family and therefore I could attend public schools only on Friday of each week. I attended school in that manner for approximately seven years but only got to the fourth grade.

I had no particular skill and had been earning my living working in fields as a field hand for meager wages. Sometimes during the month of April, 1961, I was hired by Meus Lagneaux of Judice, Louisiana, which is in Lafayette Parish, Louisiana, on agreed terms of $4.00 a day plus room and board. My duties were of a general nature. I was called upon to do whatever labors had to be performed on farm land owned by my employer. My living quarters consisted of a one room building of the approximate dimensions of eight by ten feet. The accommodations in this room consisted of one bed and one electric light bulb. There were no commode facilities, no heat and only one pipe carrying running water that led into this one room without a basin or any other facilities with which to wash myself. The only toilet facility I had consisted of a wash pan. I was fed only twice a day generally and that was at noon and at night. I was required to go to the kitchen of my employer's residence to eat. On [fol. 24] an average of about twice a week, however, I was fed only once a day inasmuch as my employer and his family left the residence at night time without feeding me. My said employer paid my wages for the first month, but thereafter consistently refused to pay me.

The payments which were made were in cash. I was never given any reason for his refusal to pay my wages after the first month. I repeatedly asked my employer to pay me my wages and on each occasion I was advised that he would pay me at a later date. I continued in this status existing under these circumstances for about eight months and except for the first month, I received no wages whatever.

I was required to remain on the farm land each day of the week except Sundays and except for two other occasions on which I was permitted to leave at night time. I was required to work whenever I was called upon to work and this was from approximately 5:00 o'clock in the morning until approximately 7:00 o'clock in the afternoon. I remained at my employer's farm for several reasons, the principal of which is that I had no other available employment nor did I have the time to seek out any additional employment. I had no money with which to travel or with which to purchase my food should I have left the premises. Additionally, I remained because I was always hopeful that my employer would pay my back due wages.

On or about January 16, 1962 my employer directed me to feed the cattle and I told him on that occasion I would not do so inasmuch as he refused to pay me my wages and furthermore that these chores were those of a colored employee. He thereupon told me to leave the premises. I again asked for my back wages but my em- [fol. 25] ployer answered me saying only that I had to leave the premises. I then asked him if I could leave my small amount of clothing in my room for approximately a week while I hitch-hiked to New Orleans to my sister's house there and try to obtain employment. He advised me this was agreeable and on that same day I hitch-hiked to New Orleans.

I failed to find employment in New Orleans because I didn't have the education requirements to qualify. On January 25, 1962, I returned to Lafayette Parish. On my return I met the brother of Mrs. Joseph Sonnier while in Scott, Louisiana, who told me he thought Mrs. Sonnier needed a helper at her dairy. Together we went to Mrs.

Sonnier's home to determine whether or not I could be employed. Mrs. Sonnier agreed to employ me. Mrs. Sonnier then advised me to report for work the following day. At this time it was approximately 5:00 o'clock in the evening, so I decided to return to my room on Mr. Lagneaux's property for the purpose of getting my clothes and sleeping there over night in preparation to report for work the following morning.

I arrived at my room, put my clothes together, saw that all my clothes was in tack then I left to see Reule Breaux. I walked approximately three miles to see Mr. Breaux to ask him to borrow $2.00 or $3.00 in order to buy something to eat. Mr. Breaux told me he had no money on him and could not lend me the money. By then it was approximately 5:30 P.M. I returned to my room. On entering my room I turned the light on and had been there for approximately ten minutes when four deputies of the Sheriff's office of Lafayette Parish appeared in my room. [fol. 26] One of these deputies was Mr. Murphy Lagneaux, the son of Meus Lagneaux, my former employer. These deputies advised me that Mr. Meus Lagneaux had instructed them to pick me up because I was trespassing on private property. They promptly took me into their custody and placed me in the Parish Jail.

As soon as they put me in jail, I asked to call an attorney, James Domengeaux of Lafayette. I was informed by the officers that they did not have time to let me use the telephone and that they would call him. I received no contact from the attorney for two or three days thereafter and repeatedly for approximately three weeks I continued to ask to call Mr. Domengeaux, but on each occasion I was told by the deputies that they did not have time to let me use the telephone but that they would call for me. Approximately three weeks after I was in jail, I heard from no attorney. I therefore asked to be permitted to use the telephone to call Mr. Harold Savoie, another attorney of Lafayette, but I was refused and given no reason for this refusal. Thereafter on or about February 26, one of my cell mates gave me the name and number of J. Minos Simon, attorney of Lafayette. I immediately asked to use the telephone to call Mr. Simon and then

without question I was immediately permitted to use the telephone to call Mr. Simon which I did.

A very few days after I was interviewed by Mr. Simon one of the deputies, Mr. Earl Picard, took me out of my cell, brought me into an interrogation room and started to question me for the first time since I had been in Jail, January 25, 1962.

[fol. 27] The substance of the interrogation consisted of the following. Deputy Picard asked me if it was true that I had attempted to borrow money from Mr. Reule Breaux, who was the acquaintance mentioned above, to which I answered in the affirmative. He then asked me if it was true that I had bummed cigarettes off of the nigroes living about a quarter of a mile from Mr. Meus Lagneaux's residence. I answered that this was not true. He then asked me if I had kissed one of the colored girls working on Mr. Meus Lagneaux's land, to which I said that I had not. I was then asked if it was true that I said I would kill Mr. Meus Lagneaux with a pipe, to which I said it was not true. Mr. Picard then told me that I needed no lawyer to defend me against the charges filed against me. I told him I was going to get me a lawyer anyway I didn't have any money. He also told me that another of Mr. Meus Lagneaux's sons, namely Doyce Lagneaux, had told him, Earl Picard, that I had stated while in Doyce Lagneaux's store that I would kill Mr. Meus Lagneaux with a pipe.

/s/ Sidney Arceneaux
SIDNEY ARCENEAUX

SWORN TO AND SUBSCRIBED before me on this day of March, 1962, at Lafayette, Louisiana.

.....
Notary public

[fol. 28] EXHIBIT B TO APPLICATION

STATE OF LOUISIANA,

PARISH OF LAFAYETTE

AFFIDAVIT

BEFORE ME, THE UNDERSIGNED AUTHORITY personally came and appeared:

Mayo Decou, info. rec'd.

Who, being duly sworn according to law, deposes and says:

That one Sidney J. Arceneaux, w/m at the Parish and State aforesaid did, on or about the 25th day of January, 1962 did commit the crime of Vagrancy, as defined by R.S. 14:107 (8), in he was found on private grounds belonging to Meux Lagneaux, located in the 2nd Ward of Lafayette Parish, without being able to account for his lawful presence there,

Filed this 29 day of Jan. 1962

/s/ Mavis Romero
Clerk of Court
DY.

Contrary to the form and statute in such cases made and provided against the peace and dignity of the State of Louisiana.

/s/ Mayo Decou

Sworn to and subscribed before me this 26th day of January, 1962 at Lafayette, Louisiana.

/s/ Joan R. Slaughter

WITNESSES:

Accused: Parish Jail

DY Clerk of Court

Warrant delivered to:

Sheriff Harson

Date Jan. 26, 1962

Norris Meyers, Deputy
Lester Landry
Andrus Arabie

DISPOSITION

Plea .....

.....

.....

A TRUE COPY

3-9-62

/s/ Mavis Romero

[fol. 29]

To: Clerk, City Court of Lafayette

FILED THIS 29
DAY OF Jan. 1962

/s/ Mavis Romero
Dy. Clerk of Court

PLEASE PERMIT Mayo Decou (info. received) to make a criminal charge against Sidney J. Arceneaux w/m whose address is Parish Jail that he did on or about the 25th day of January 1962.

Vagrancy—Meus Lagneaux—2nd Ward.

TRUE COPY ATTEST

3-9-62

/s/ Mavis Romero

Deputy Landry, Sheriff's Office
Deputy Arabie, Sheriff's Office
Deputy Meyers, Sheriff's Office

/s/ W. E. Logan Jr.
Ass't District Attorney

[fol. 30] EXHIBIT C TO APPLICATION

WARRANT

State of Louisiana, Parish of Lafayette

14982

TO Sheriff Harson Greeting

WHEREAS, Complaint has been made before me, the undersigned authority in and for the parish aforesaid, upon oath of Mayo Decou, info. rec'd. that one Sidney J. Arceneaux, w/m at the parish aforesaid did on or about the 25th day of January A.D., 1962, did commit the crime of Vagrancy, as defined by R.S. 14:107 (8), in that he was found on private grounds belonging to Meus Lagneaux, located in the 2nd Ward of Lafayette Parish, without being able to account for his lawful presence there, contrary to the form of the statute in such cases made and provided.

These are therefore to command you, in the name of the State of Louisiana, to apprehend the said Sidney J. Arceneaux, w/m forthwith and bring him before me to answer to complaints aforesaid, and be further dealt with according to law.

Given under my hand officially this 26 day of January, 1962.

/s/ Lucien C. Bertrand Jr.
City Judge, Ad Hoc

Accused can be located at Parish Jail

ORDER:

Considering the motion (petition) of accused, as well as the law in such case made and provide

IT IS ORDERED, that Sidney J. Arceneaux, w/m be released from custody upon furnishing bond in the sum of $50 with surety acceptable to the Sheriff or any proper officer and conditioned as provided by law.

Granted at Lafayette, Louisiana, this 26th day of January, 1962

/s/ Lucien C. Bertrand, Jr.
City Judge, Ad Hoc

[fol. 31] EXHIBIT D TO APPLICATION

STATE OF LOUISIANA

vs.

SIDNEY ARCENEAUX

15th Judicial District Court

Parish of Lafayette

Cr. Docket No. 14982

MOTION FOR PRELIMINARY EXAMINATION, ALTERNATIVELY HABEAS CORPUS

Sidney Arceneaux, appearing herein through counsel, moves for a preliminary examination or alternatively a writ of habeas corpus in support whereof movant respectfully represents that:

1.

On January 26, 1962, he was charged by affidavit with the offense of vagrancy; no indictment or information has been filed against him and he has been incarcerated since the filing of said charge where he presently remains in the parish jail of Lafayette; that said charge is without legal basis either in fact or law.

WHEREFORE movant prays that a preliminary examination or hearing be held contradictorily with the District Attorney or alternatively a writ of habeas corpus issue and after due hearing movant be discharged.

SIMON & TRICE
301 E. Congress Street
Lafayette Louisiana

By /s/ J. Minos Simon

ORDER

Considering the foregoing motion;

IT IS ORDERED that a preliminary examination be and the same is hereby fixed for hearing for the 8th day of March, 1962; alternatively that the Sheriff of Lafayette Parish do show cause on said date why movant should not be released from custody and further that said hearing be held contradictorily with the District Attorney.

[fol. 32] OFFICIALLY GRANTED on this 27th day of February 1962, at Lafayette, Louisiana.

/s/ Wilmot Dalferes
District Judge

FILED THIS 28
DAY OF Feb. 1962

/s/ Mavis Romero
Clerk of Court
Dy

A TRUE COPY ATTEST

Lafayette, La. 3-9-62

/s/ Mavis Romero
DY Clerk of Court

[fol. 33] EXHIBIT E TO APPLICATION

STATE OF LOUISIANA)
PARISH OF LAFAYETTE)

BE IT REMEMBERED, That on the 8th day of March A. D., 1962 Bertrand De Blanc District Attorney of the Fifteenth Judicial District of the State of Louisiana, prosecuting in said capacity, for and in the name and by the authority of said State within and for the district aforesaid, in his own proper person comes into the Court of said District at the regular term thereof for the year A. D., 1962 holden in and for the parish of Lafayette ..... and here gives the Court to understand and be informed that SIDNEY J. ARCENEAUX at the Parish of Lafayette on or about the 25th day of January in the year of our Lord, one thousand nine hundred and Sixty-two (A.D. 1962) did commit the crime of Vagrancy as defined by R.S. 14:107 (8), in that he was found on private grounds belonging to Meus Lagneaux without being able to account for his lawful presence thereon contrary to the form of the Statute of the State of Louisiana, in such cases made and provided, and against the peace and dignity of the same.

/s/ Bertrand De Blanc
District Attorney Fifteenth
Judicial District of Louisiana

[fol. 34] No. 14983

STATE OF LOUISIANA

vs.

SIDNEY J. ARCENEAUX

INFORMATION

CHARGE

VAGRANCY

Filed March 9 1962

/s/ Marilyn Champagn
Dy. Clerk of Court.

A TRUE COPY ATTEST
Lafayette La. 3-9-62

/s/ Mavis Romero
Dy. Clerk of Court

[fol. 35] EXHIBIT F TO APPLICATION

STATE OF LOUISIANA

vs.

SIDNEY ARCENEAUX

15th Judicial District Court
Parish of Lafayette
State of Louisiana
Criminal Docket No. 14982

ANSWER TO MOTION FOR PRELIMINARY EXAMINATION

NOW INTO COURT comes BERTRAND DE BLANC, DISTRICT ATTORNEY, in and for the Fifteenth Judicial District, who for answer to the application for a preliminary examination in the above entitled and numbered cause, says:

I.

That on March 9, 1962, he filed a Bill of Information giving the Court to understand and be informed that Sidney Arceneaux at the Parish of Lafayette on or about the 25th day of January, in the year of our Lord, one thousand nine hundred and Sixty-two (A.D. 1962) did commit the crime of Vagrancy as defined by R.S. 14:107 (8), in that he was found on private grounds belonging to Meus Lagneaux without being able to account for his lawful presence thereon contrary to the form of the Statute of the State of Louisiana, in such cases made and provided, and against the peace and dignity of the same.

WHEREFORE, respondent prays that the application for a preliminary examination be denied and for all general and equitable relief.

/s/ Bertrand De Blanc
District Attorney

A TRUE COPY ATTEST
Lafayette La. 3-9-62

/s/ Mavis Romero
Dy. Clerk of Court

Filed 3-9-62

/s/ Carolyn D. Walker
Dy Clerk of Court

[fol. 36] EXHIBIT G TO APPLICATION

STATE OF LOUISIANA

vs.

SIDNEY ARCENEAUX

Fifteenth Judicial District Court
No. 14,982
Parish of Lafayette, Louisiana

NOTE OF EVIDENCE taken in open court at Lafayette, Louisiana, this 9th day of March, A.D., 1962:

PRESENT: Honorable A. Wilmot Dalferes, Judge

Mr. William Logan, Jr., Assistant District Attorney, for the State.

Simon and Trice, for the defendant, Mr. Phil Trice appearing.

THE COURT: This order for a preliminary examination was obtained on February 27, 1962; the order fixing the hearing for March 8, 1962, was obtained by the relator; on March 8th the matter was continued on motion of the District Attorney on the grounds that he had not been properly served; motion was granted and the matter was continued until March 9, 1962; on March 9, 1962, the State through the District Attorney appeared and filed answer to the motion for a preliminary examination, alleging that on March 9th, prior to the calling up of the preliminary examination for hearing a bill of information had been filed against the defendant, which information is filed in these proceedings.

You submit the matter to the court to dismiss this preliminary examination?

MR. LOGAN: Yes, sir.

ARGUMENTS OFF THE RECORD

THE COURT: The accused is before the court on a charge of vagrancy growing out of the filing of an affidavit on January 26, 1962. On the same date the com-

mitting magistrate, Mr. Lucien Bertrand, Judge Ad Hoc, City Court, fixed the bond of the accused at $50.00. The defendant has been incarcerated in the parish jail since his arrest on January 25, 1962; in spite of a bond being fixed in the case, he has not exercised the privilege of release by furnishing bond. The court is not informed whether he is unable to furnish bond or whether he does not desire to furnish a bond.

[fol. 37] The court is presented this morning with the situation where following the granting of a preliminary examination and subsequent to the hearing the State has filed a bill of information tracking the charges of the original affidavit filed on January 26. The court is of the opinion that the purpose of a preliminary examination is to grant to the defendant a discharge if he is not guilty of a crime or a fair bond if the bond is excessive, or a bond if the charge is bailable under our existing law.

The Court will sustain the motion of the state and recall its order for a preliminary examination in view of the fact that an information was filed by the District Attorney prior to the hearing for a preliminary examination.

MR. TRICE: To which ruling of the court we respectfully object for the following reasons: first, that the ruling grants to the State relief not requested by the State in its answer; second, that the preliminary examination having been ordered at a time when the granting of same was mandatory, the right of the accused to such examination cannot subsequently be denied by the action of the District Attorney in filing a bill of information on the date set for preliminary examination; third, on the grounds that the bill of information charges no offense known to law and if it charges an offense within the meaning and intentment of a Louisiana statute, then both the statute and the bill of information are unconstitutional, null, and void, as being violative of the guaranties contained in the United States Constitution and of the Louisiana Constitution and Laws; and finally, on the grounds that the accused as I heretofore stated to the court is unable to make bond and his continued stay in jail for six weeks is indicative of that fact, and that

the entire course of this prosecution is further violative of his right to a speedy trial as guaranteed by both Federal and Louisiana laws.

We, of course, reserve a bill of exception to your Honor's ruling, making the statement of facts of the court, and the ruling of the court, and our objection a part thereof, as well as of course the bill of information [fol. 38] and the answer filed this morning on behalf of the District Attorney. We also ask to make part thereof the affidavit bearing No. 575 filed in the Clerk's office, together with the charge slip attached thereto filed by Mr. Logan as Assistant District Attorney.

I, John Rixie Mouton, Official Court Reporter, do hereby certify that the above and foregoing three pages constitute all of the evidence adduced in the trial of this cause on this the 9th day of March, 1962.

.....
Official Court Reporter

[fol. 39] EXHIBIT H TO APPLICATION

SIMON & TRICE
Attorneys at Law
301 E. Congress Street
LAFAYETTE, LOUISIANA

J. Minos Simon
Phil Trice

P. O. Box 2241
Telephone CE 4-3263
Our File No. L-411

March 9, 1962

Honorable A. Wilmot Dalferes
District Judge
Lafayette Parish Courthouse
Lafayette, Louisiana

Dear Judge Dalferes:

This is to inform you that on behalf of Sidney Arceneaux and the proceedings before you this morning, we are applying to the Louisiana Supreme Court for a writ of habeas corpus and, alternatively, for writs of mandamus, certiorari and prohibition.

Very truly yours,

SIMON & TRICE

BY: .....
PHIL TRICE

PT:sc

[fol. 40]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 41]

SUPREME COURT OF THE UNITED STATES

No. 42 Misc., October Term, 1962

SIDNEY ARCENEAUX, PETITIONER

vs.

LOUISIANA

On petition for writ of Certiorari to the Supreme Court of the State of Louisiana.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—February 18, 1963

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 835.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1963 692751 3

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

vs.

LOUISIANA.

BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF FOR PETITIONER

J. MINOS SIMON
1408 Pinhook Road
Lafayette, Louisiana
Counsel for Petitioner.

INDEX

SUBJECT INDEX

Page

BRIEF FOR PETITIONER

Opinions Below 1

Jurisdiction 2

Constitutional Provisions and Statutes Involved 2

Questions Presented 4

Statement of the Case 4

Summary of Argument 8

Argument 9

Conclusion 26

Appendix 27

AUTHORITIES CITED

CASES:

Aero Transit Co. v. *Commissioners* (1947), 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99 17

Albertson v. *Millard* (1953), 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed. 983 17

Beail v. *District of Columbia* (1952), 201 F. 2d 177 12

Bolling v. *Sharpe* (1954), 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 22

Champlin Refining Co. v. *Commission* (1932), 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 14

Connally v. *General Construction Co.* (1926), 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 ..... 13, 14, 15

Cramp v. *Board of Public Instruction of Orange County* (1961), 368 U.S. 278, 83 S.Ct. 279, 7 L.Ed. 290 ..... 14, 15

Hartford Steam Boiler Inspection and Insurance Co. v. *Harrison* (1937), 301 U.S. 459, 57 S.Ct. 838, 81 L.Ed. 1223 22

Page

Hebert v. *Louisiana* (1926), 272 U.S. 312, 47 S.Ct. 103, 71 L.Ed. 270 17
Henry v. *United States* (1959), 361 U.S. 98, 80 S.Ct. 168 20
Hernandez v. *State of Texas* (1954), 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 23
Herndon v. *Lowry* (1937), 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066 14
International Harvester Co. v. *Kentucky* (1914), 234 U.S. 216, 345 S.Ct. 853, 58 L.Ed. 1284 14
Kingsley Pictures Corp. v. *Regent* (1959), 360 U.S. 684, 79 S.Ct. 1362, 3 L.Ed. 1512 17
Lanzetta v. *New Jersey* (1939), 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 13
Louisville Gas and Electric Co. v. *Coleman* (1928), 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770 .. 22
Lovell v. *Griffin* (1938), 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 14
McNabb v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 25
Morey v. *Doud* (1957), 354 U.S. 457, 77 S.Ct. 1344 22
Skiriotes v. *Florida* (1941), 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 17
State v. *Antoine* (1938), 189 La. 619, 180 So. 465 19
State v. *Bentley* (1951), 219 La. 893, 54 So. 2d 137 19
State v. *Clement* (1946), 194 La. 395, 193 So. 685 11
State v. *McCormack* (1917), 142 La. 580, 77 So. 288 16
State v. *Richardson* (1932), 175 La. 823, 144 So. 587 19
State v. *Rock* (1926), 162 La. 299, 110 So. 482 18
State v. *Sanford* (1943), 203 La. 961, 14 So. 2d 778 11
State v. *Sinigal* (1915), 138 La. 469, 70 So. 478 19
State v. *Solomon* (1952), 222 La. 269, 62 So. 2d 481 ..... 20, 21
State v. *Stahl* (1959), 236 La. 362, 107 So. 2d 670 19
State v. *Westmoreland* (1913), 133 La. 1015, 63 So. 502 9

Page

State v. *Williams* (1931), 173 La. 1, 136 So. 68 11
Stromberg v. *California* (1931), 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 14
Thornhill v. *Alabama* (1940), 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 14
United States v. *Burnison* (1950), 339 U.S. 87, 70 S.Ct. 503 17
United States v. *Cardiff* (1952), 344 U.S. 174, 73 S.Ct. 189, 97 L.Ed. 200 14
Upshaw v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10 25
Winters v. *New York* (1948), 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840 ..... 14, 15, 17
Wolf v. *Colorado* (1949), 338 U.S. 25, 69 S.Ct. 1359 20

CONSTITUTIONS AND STATUTES:

United States Constitution, Fifth Amendment .. 9, 18
United States Constitution, Fourteenth Amendment 2, 4, 8, 15, 17
Louisiana Constitution
Article 1, Section 11 19
Article 7, Section 10 ..... 2, 8
Article 7, Section 42 2
Article 7, Section 83 2
28 U.S.C. § 1257(3) 2
L.S.A.-R.S. 14:7 ..... 11, 17
L.S.A.-R.S. 14:107 ..... 2, 9, 17, 26
L.S.A.-R.S. 15:60 ..... 3, 23
L.S.A.-R.S. 15:80 ..... 3, 6
L.S.A.-R.S. 15:113 ..... 3, 8
L.S.A.-R.S. 15:114 8
L.S.A.-R.S. 15:127 ..... 3, 7
L.S.A.-R.S. 15:154 ..... 3, 6, 25
L.S.A.-R.S. 15:155 6
L.S.A.-R.S. 15:321 ..... 3, 7
L.S.A.-R.S. 15:323 ..... 3, 7
L.S.A.-R.S. 15:387 18

Page

MISCELLANEOUS:

91 C.J.S. 778, Vagrancy, Section 1 ..... 16, 20
37 N.Y.U. L.Rev. No. 1, pp. 102-136, "The Vagrancy Concept Reconsidered: Problems and Abuses in Statute Criminology" 20

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

vs.

LOUISIANA.

BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF FOR PETITIONER

Opinions Below

The Louisiana Supreme Court ruling complained of by petitioner consists of a denial of petitioner's application for writs of habeas corpus and for writs of certiorari, mandamus and prohibition rendered on March 16, 1962, entitled *State of Louisiana* v. *Sidney Arceneaux,* bearing Louisiana Supreme Court docket number 46,064, and reading in its entirety: "Writ refused. There is no error of law in the ruling complained of.", appearing at page 1 of the transcript of record. This application was made in respect to the ruling of the Fifteenth Judicial District Court, Parish of Lafayette, Louisiana, dated March 8, 1962, whereby said court summarily denied, without hearing, petitioner's application for a preliminary examination and alternatively for writ of habeas corpus, which ruling appears at pages 31-33 of the transcript of record.

Statement of Jurisdictional Grounds

The matter before the Court involves a final judgment or decree of the Highest Court of Louisiana, i.e., Louisiana Supreme Court, rendered on March 16, 1962, refusing to petitioner writs of habeas corpus, certiorari, mandamus and prohibition, in which application the validity of Louisiana Revised Statutes, Title 14, Section 107, was drawn in question as being repugnant to the Fourteenth Amendment to the United States Constitution. This application was denied and thus the validity of the State statute was upheld by the Louisiana Supreme Court.

The jurisdiction of this Court was invoked under the provisions of United States Code, Title 28, Section 1257 (3) and petitioner's application for writ of certiorari was granted on February 18, 1963.

Constitutional Provisions and Statutes Involved

The Fourteenth Amendment to the Constitution of the United States;

Louisiana Constitution, Article 7, Section 10;

Louisiana Constitution, Article 7, Section 42;

Louisiana Constitution, Article 7, Section 83;

Louisiana Revised Statutes, Title 14, Section 107;

Louisiana Revised Statutes, Title 15, Section 49;

Louisiana Revised Statutes, Title 15, Section 50;

Louisiana Revised Statutes, Title 15, Section 52;

Louisiana Revised Statutes, Title 15, Section 53;

Louisiana Revised Statutes, Title 15, Section 54;

Louisiana Revised Statutes, Title 15, Section 59;

Louisiana Revised Statutes, Title 15, Section 60;

Louisiana Revised Statutes, Title 15, Section 62;

Louisiana Revised Statutes, Title 15, Section 70;

Louisiana Revised Statutes, Title 15, Section 77;

Louisiana Revised Statutes, Title 15, Section 78;

Louisiana Revised Statutes, Title 15, Section 79;

Louisiana Revised Statutes, Title 15, Section 80;

Louisiana Revised Statutes, Title 15, Section 81;

Louisiana Revised Statutes, Title 15, Section 91;

Louisiana Revised Statutes, Title 15, Section 92;

Louisiana Revised Statutes, Title 15, Section 113;

Louisiana Revised Statutes, Title 15, Section 121;

Louisiana Revised Statutes, Title 15, Section 123;

Louisiana Revised Statutes, Title 15, Section 127;

Louisiana Revised Statutes, Title 15, Section 128;

Louisiana Revised Statutes, Title 15, Section 130;

Louisiana Revised Statutes, Title 15, Section 131;

Louisiana Revised Statutes, Title 15, Section 132;

Louisiana Revised Statutes, Title 15, Section 134;

Louisiana Revised Statutes, Title 15, Section 135;

Louisiana Revised Statutes, Title 15, Section 137;

Louisiana Revised Statutes, Title 15, Section 154;

Louisiana Revised Statutes, Title 15, Section 340;

Louisiana Revised Statutes, Title 15, Section 321;

Louisiana Revised Statutes, Title 15, Section 323;

Louisiana Revised Statutes, Title 15, Section 341.

Questions Presented

1. Does a State statute which renders persons guilty of vagrancy "who are found in or near any structure, movable, vessel, or private grounds, without being able to account for their presence therein" meet the safe-guarding standards of the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

2. Does an illegal arrest and imprisonment carried out and maintained by State officials in violation of a prisoner's constitutional and statutory rights and the subsequent denial to the prisoner by State judicial officials of a State statutory right to preliminary examination and habeas corpus in respect thereto affect the right of the State to prosecute?

Statement of the Material Facts

On the evening of January 25, 1962, as darkness settled about his one-room shack, petitioner was arrested by four Deputy Sheriffs of Lafayette Parish, Louisiana.[1] These officers had no warrant for his arrest. They advised him, however, that they were arresting him in consequence of the oral request of the owner (one Meus Lagneaux) of the premises where petitioner lived, who, they informed petitioner, had told them petitioner was trespassing.

The occasion for petitioner's presence on these premises antedated his arrest. In April, 1961 he had been hired by

[1] These uncontradicted facts are found in petitioner's application for writs to the Louisiana Supreme Court, transcript of record pp. 4-16, and Exhibit A attached to his application consisting of petitioner's affidavit found at pp. 17-20 of the transcript of the record.

Meus Lagneaux as a farm laborer. He was to receive wages of $4.00 a day and furnished with food and lodging. The lodging furnished by his employer consisted of a one-room structure approximately 8 x 10 feet in size, which contained in the aggregate one bed, one electric light, and a wash-basin.

His wages were paid for the first month, but thereafter discontinued for reasons best known to his employer. Because of his impecunious condition and utter illiteracy, while timorously but vainly periodically requesting payment of his wages, petitioner continued working for his employer in virtual peonage. Then, on January 16, 1962, a dispute arose between petitioner and his employer, during which petitioner again requested payment of his wages. His employer not only refused to make payment, but ordered petitioner to leave his premises. Petitioner expressed his intention to abide by his employer's wishes and then requested permission to leave his meager personal belongings in his room, while petitioner went to New Orleans, where his sister lived, in search of work. His employer consented.

Impaired by his lack of skill and utter illiteracy, petitioner was unable to secure employment in New Orleans and, on January 25, 1962, returned to Lafayette Parish. On his return, however, he obtained employment on another farm situated in the neighborhood of his former employer. He was instructed by his new employer to appear the following day to start work. By then the day was drawing to a close. He visited a friend in an effort to borrow two or three dollars so as to enable him to buy something to eat, but was unsuccessful. At approximately 5:30 o'clock of that evening he appeared at his aforesaid room to gather his personal belongings. Upon entering, he turned on the one light in the room. Within a few minutes after he had entered his room, the four arresting officers (one of whom

—Murphy Lagneaux—was his former employer's son) rapped on the door of his room and his arrest followed.

Petitioner was taken to the Parish Court House and there locked behind bars. The following morning the Assistant District Attorney gave written authorization to a Deputy Sheriff to file a charge of vagrancy against him. These State officials then went through the hollow formality of causing a warrant for petitioner's arrest to issue. Thereafter they took no further action in respect to petitioner's incarceration, though required to do so by the mandatory laws of Louisiana,[2] and in fact petitioner was kept incommunicado until February 26, 1962.

On February 27, 1962 petitioner's counsel presented to the State District Court an application for preliminary examination,[3] and, alternatively, for a writ of habeas corpus. The District Judge signed the order granting preliminary examination and habeas corpus hearing, both to be heard on March 8, 1962.

After the District Judge called up these proceedings for hearing, the Sheriff while in open court extracted from his pocket the aforesaid "warrant", whereupon the Court summarily denied habeas corpus, though said Sheriff had never made response to petitioner's petition as required by Louisi-

---

[2] L.S.A.-R.S. 15:80 provides: "When any person shall have been arrested without a warrant, the peace officer, after he shall have caused him to be booked, shall bring him, without unnecessary delay, if the charge be such as to entitle the accused to a preliminary examination, before the Judge having authority to sit as a committing magistrate in the case, otherwise, before the Judge having trial jurisdiction thereof."

[3] Under the provisions of L.S.A.-R.S. 15:154 before a bill of information is filed or a bill of indictment found, an accused as a matter of right is entitled to a preliminary examination that will determine the existence of probable cause for his arrest and incarceration, under which procedure the State has the burden of producing proof showing such a probable cause. All evidence adduced at such a hearing must be reduced to writing and must be under oath. L.S.A.-R.S. 15:155.

ana law.[4] The District Attorney then moved orally for a continuance of the preliminary examination, alleging that he had not been served, and although Louisiana law does not require that he be served, but does require that all motions for continuance be in writing,[5] the Court continued preliminary examination until the following day.

When petitioner was called for preliminary examination on March 9, 1962, the District Attorney filed a document entitled "Answer",[6] wherein he alleged that he had, on that same day, filed a bill of information charging petitioner with the offense of vagrancy. Although the order of February 27 had granted the preliminary examination at a time when the Court had no discretionary power in respect thereto,[7] and the "Answer" did not ask that such order be recalled or revoked, but prayed instead that the preliminary examination be denied, the Court thereupon recalled and revoked its previous order and refused to permit petitioner a preliminary examination. Petitioner was

---

[4] L.S.A.-R.S. 15:127 provides: "The person on whom a writ of habeas corpus shall have been served, whether it be directed to him or not, shall at the time and place designated in the writ, produce the relator and make a written return to said writ."

[5] L.S.A.-R.S. 15:321 provides: "Every application for a continuance shall be by written motion alleging specifically the grounds upon which it is based. The allegations of the motion when made on behalf of the accused, must be sworn to by him or his counsel."

15:323: "Every motion for a continuance shall be tried summarily and contradictorily with the opposite party, and unless the evidence shows to the satisfaction of the Court that mover is entitled to a continuance, the Court shall order the trial to be proceeded forthwith."

[6] See transcript of record, p. 30, in which the District Attorney significantly does not deny the affirmative allegations of petitioner's application that his incarceration was without support in law or fact but merely recites that the District Attorney had filed a bill of information against petitioner on March 9, 1962, bearing date for petitioner's application for preliminary examination and habeas corpus.

[7] See footnote 3 and statute referred to therein.

then remanded to jail, where he had been continuously from the date of his arrest and remained, because he was too poor to post an appearance bond.

Invoking the jurisdiction of the Louisiana Supreme Court, imposed upon it by Article 7, Section 10 of the Louisiana Constitution, and by L.S.A.-R.S. 15:113 and 15:114, petitioner's counsel filed his application for writs of certiorari, mandamus and prohibition and for a writ of habeas corpus, complaining generally of a denial of petitioner's civil rights and challenging the constitutionality of the vagrancy statute on which the State officials relied for petitioner's incarceration.[5] Following the denial of this application, petitioner applied for writ of certiorari to this Court, which application was granted on February 18, 1963.

Summary of Argument

It is petitioner's contention that the vagrancy statute of Louisiana is unconstitutional in two major respects:

1. It is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application and therefore it does not inform what is commanded or prohibited by the State under its terms, in consequence of which it denies to petitioner due process contemplated by the Fourteenth Amendment.

2. It denies to petitioner and those similarly situated the equal protection of State laws and thus further violates the guaranties of the Fourteenth Amendment in that

a. It creates an unreasonable classification and singles out those falling within the classification for

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[5] See transcript of record, pp. 7-22.

different treatment, in respect to which there is no reasonable basis to support the contention that those falling within the classification are potential criminals or that their mode of life breeds criminal conduct.

b. It seeks to proscribe and punish a condition or status as opposed to a defined conduct, as a result of which petitioner and those similariy situated do not stand on an equal footing with other citizens of Louisiana.

c. It further denies to petitioner legal rights, e.g., the presumption of innocence, and the privileges of the Fifth Amendment.

3. The denial by State officials of the multiple legal rights secured to petitioner by the laws of Louisiana renders his arrest and incarceration void ab initio as being contrary to constitutional due process and equal protection.

ARGUMENT

(a) Statute is void for vagueness.

Vagrancy has been a State offense in Louisiana since 1855. *State* v. *Westmoreland* (1913), 133 La. 1015, 63 So. 502. The crime of vagrancy as materially relates to the case at bar is defined by Louisiana Revised Statutes, Title 14, Section 107, as amended by Act 454, Section 1 of 1952, in these words:

"The following persons are and shall be guilty of vagrancy:

* * * * *

(8) Persons who are found in or near any structure, movable, vessels or private grounds, without being able to account for their lawful presence therein;

> Whoever commits the crime of vagrancy shall be fined not more than $200 or imprisoned for not more than nine months, or both."

The criminal charge filed against petitioner was based upon this statute. It is petitioner's contention that the statute is void for vagueness.

The ambiguity and consequent broad reach of this crime is patent. In the first instance, it obviously invests police officers with authority not otherwise enjoyed by them. In such cases they are empowered to act as arresting officer, judge and jury in determining whether or not the person accused has given an acceptable accounting of his presence. It is a gimmick by which police officers are empowered to circumvent the sanctions of lawful arrest, in that under such a statute, arrest may occur or not as the whim of the arresting officer may dictate. Such an anomalous circumstance exists simply because the statute provides for no safeguards or criteria by which the meaning of the statute may be determined.

The phrase "without being able to account for their lawful presence" is subject to a variety of interpretations by men of common intelligence. There is no indication from a reading of this statute that this phrase relates to the physical or mental ability of a person to account for his lawful presence. Obviously a person suffering from shock or being seized by sudden and disabling physical ailment while walking along public walkways near a building would be a person unable to account for his lawful presence within the meaning of the statute and thus could be imprisoned for conduct over which he had no control. Similarly, a mental incompetent or a deaf and mute person would be unable to account for his lawful presence under such circumstances.

The meanings of the word "account" indicated in dictionaries are numerous and varied. And unlike most states a common law meaning of crimes cannot in this case be called in aid of a determination of the meaning of the words used in this statute, inasmuch as in Louisiana no act or conduct, however reprehensible, is a crime unless it is defined and made a crime clearly and unmistakably by statute. *State* v. *Sanford* (1943), 203 La. 961, 14 So. 2d 778; *State* v. *Williams* (1931), 173 La. 1, 136 So. 68; *State* v. *Clement* (1946), 194 La. 395, 193 So. 685; L.S.A.-R.S. 14:7. But even should it be conceded that the consensus concerning the meaning of the word "account" is to the effect that it is a statement or explanation of one's activities, that meaning itself is ambiguous. What explanation is contemplated by the statute? Does this statute speak of philosophy, law, sociology or custom? An explanation philosophically sound may offend prevailing custom or vice-versa. Similarly, an accounting meeting the highest standards expounded by modern sociologists may be legally impermissible.

Explanations of human activities are as various and diversified as are human beings. A hunter may be found near private grounds in search of his hounds, a beggar in pursuit of something to eat, an artist because he seeks to capture the scenery on canvas. Would the giving by these persons of such an explanation for their presence constitute a proper accounting if they were there at 6 a.m.? 1 p.m.? 8 p.m.? 11 p.m.? 2 a.m.? 4 a.m.? Would a prospective purchaser found near a structure or private grounds be deemed a vagrant under this statute if he explained his presence as being for the purpose of purchasing either the structure or private grounds to build a multi-million dollar factory that would create jobs for three hundred families? Or to purchase it for the purpose of operating a house of assignation? Or to purchase it for

the purpose of gaining entrance to an adjoining bank in order to burglarize it? Would a person found in or near any structure, movable vessels, or private grounds be a vagrant if he were to explain his presence by stating that he was enjoying his liberty as an American citizen? *Beail* v. *District of Columbia* (1952), 201 F. 2d 177.

Obviously the answers to these questions are multitudinous in count and equally variant in nature. There are no standards by which definitive meanings may be imparted to the words used nor are there limits established beyond which their meanings may not travel. Consequently, the practical implementation of this penal statute of necessity is effected accordingly as the propensities for good or evil of those charged with its enforcement may induce them to action. As a result, the moral strictures of a benevolent tyrant or the depravity of an evil doer equally may be accommodated and the liberty of the individual immolated on the fiat of arbitrary police action.

The accounting required by the statute is further complicated by the fact that it must be related to a person's "lawful" presence. Thus, in accounting for his presence, a person is required to be able accurately to interpret all existing laws in relationship to his presence, in order to exculpate himself from the catchall net of this vagrancy statute. Even then there is the risk that his interpretation of the law, though correct, may not conform to that of the court which tries him for vagrancy.

Thus it is that under the statute in question a person is required at peril of his liberty to speculate as to the meaning of this penal statute. This statute does not inform what the State commands or forbids. The status or act sought to be denounced is couched in terms so vague that men of common intelligence must necessarily guess at its meaning or differ as to its application. And for that reason it

operates to deny liberty without due process and is unconstitutional.

The applicable rule is stated in *Connally* v. *General Construction Co.* (1926), 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. *And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.*"

The import of the statute under consideration is legally indistinguishable from the statute considered by the Court in *Lanzetta* v. *New Jersey* (1939), 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888. In *Lanzetta* the Court had for consideration the challenge that a New Jersey statute was void for vagueness. In so many words the statute made it a crime to be a gangster, which status was defined to be a person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons who had been convicted of an offense. The Court exhibited no difficulty in arriving at the conclusion that such a statutory provision was ambiguous and therefore unconstitutional. The language of this statute was tested by the rule of *Connally* and was found grossly wanting. The statute was unmasked by the Court in these words (page 458):

> "The challenged provision condemns no act or omission; the terms it employs to indicate what it purports

> to denounce are so vague, indefinite, and uncertain that it must be condemned as repugnant to the due process clause of the Fourteenth Amendment."

Pointedly, the Court further observed:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

The validity of the provision of any statute must be tested on the basis of the terms employed. *Connally* v. *General Construction Co.*, supra. It is the statute, not the accusation, that may be brought under it which prescribes the rule to govern conduct and warns against transgression. *Stromberg* v. *California* (1931), 283 U.S. 359, 368; S. Ct. 532, 75 L. Ed. 1117; *Lovell* v. *Griffin* (1938), 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949. And these statutes must be couched in such terms and language as to make the offense sought to be denounced sufficiently explicit so that men of common intelligence will understand what is prohibited or commanded. *Champlin Refining* v. *Commission* (1932), 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062; *Stromberg* v. *California*, supra; *Herndon* v. *Lowry* (1937), 301 U.S. 242, 57 S. Ct. 732, 81 L. Ed. 1066; *Thornhill* v. *Alabama* (1940), 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Winters* v. *New York* (1948), 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 840; *International Harvester Co.* v. *Kentucky* (1914), 234 U.S. 216, 34 S. Ct. 853, 58 L. Ed. 1284, inasmuch as "words which are vague and fluid may be as much of a trap for the innocent as the ancient laws of Caligula". *U.S.* v. *Cardiff* (1952), 344 U.S. 174, 176, 73 S. Ct. 189, 97 L. Ed. 200.

In *Cramp* v. *Board of Public Instructions of Orange County* (1961), 368 U.S. 278, 83 S. Ct. 279, 7 L. Ed. 290, the Court had for consideration the constitutionality of a Florida statute which required the complaining party to

execute a written oath in which he was required to swear among other things that he had never lent his "aid, support, advice, counsel or influence to the Communist Party". In noting vagueness, the Court observed that the provisions of the statute were completely lacking in terms susceptible of objective measurement, and were too broad in scope to convey the meaning to a person of common intelligence of what was intended by the statute. Concluding against its constitutionality, the Court said (page 387):

> "We think this case demonstrably falls within the compass of those decisions of the Court which hold that 'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential due process of law'. *Connally* v. *General Construction Co.*, supra • • • •"

The Louisiana vagrancy statute does not stand up to the test of the *Connally* rule and petitioner therefore respectfully submits that it should be declared unconstitutional because it violates the due process clause of the Fourteenth Amendment.

(b) Denial of Equal Protection.

The vagrancy statute under consideration condemns not a criminal act or criminal conduct but seeks to proscribe and punish a declared status only, in consequence of which it is not reasonably related to any legislative purpose impervious to constitutional attack. A person is not amenable to prosecution under this statute for what he does but rather for the condition or status of his existence. It is the type legislation which falls within the category so lucidly described by Justice Frankfurter in his dissent in *Winters* in these words:

"The case involved a New Jersey statute of the type that seeks to control 'vagrancy'. *These statutes are in a class by themselves,* in view of the familiar abuses to which they are put . . . Definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of the police and prosecution although not chargeable with any particular offense. In short, these 'vagrancy statutes' and laws against 'gangs' are not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided."

The universally avowed purpose of vagrancy statutes ostensibly is to segregate the members of society into two basic groups, i.e., the good members and the objectionable members, with a view to preventing crimes which are likely to flow from a vagrant's mode of life.

"The purpose of vagrancy statutes is to subject persons, whose habits of life are such as to make them objectionable members of society, to police regulation promotive of the safety or good order of the community in which they are found, and to prevent them from becoming charges on the public *but not to punish them for the doing of specific overt acts.* In other words, the purpose of vagrancy statutes is to prevent crimes which may likely flow from a vagrant's mode of life by cutting out at the roots breeding places of many crimes offensive to the personal well-being of many citizens, which endanger private property and threaten the peace. Such preventive purpose wholly fails if a law-enforcement officer must wait until a crime is committed • • •" 91 CJS 778, *Vagrancy,* Section 1.

Louisiana subscribes to such a broad concept of penal legislation. *State* v. *McCormack* (1917), 142 La. 580, 77 So.

288. Such an authoritative interpretation puts the words of the interpretation in the statute as definitely as if they had been so amended by the legislature. *Hebert* v. *Louisiana* (1926), 272 U.S. 312, 47 S. Ct. 103, 71 L. Ed. 270; *Skiriotes* v. *Florida* (1941), 313 U.S. 69, 61 S. Ct. 924, 85 L. Ed. 1193; *Winters* v. *New York* (1948), 333 U.S. 507, 514, 68 S. Ct. 665, 92 L. Ed. 840; *Kingsley Pictures Corp.* v. *Regent* (1959), 360 U.S. 684, 79 S. Ct. 1362, 3 L. Ed. 1512; *Albertson* v. *Millard* (1953), 345 U.S. 242, 73 S. Ct. 600, 97 L. Ed. 983; *U. S.* v. *Burnison* (1950), 339 U.S. 87, 70 S. Ct. 503; *Aero Transit Co.* v. *Commissioners* (1947), 332 U.S. 495, 68 S. Ct. 167, 92 L. Ed. 99.

Within such a context does the vagrancy statute at bar conform to the safeguarding standards of the equal protection clause of the Constitution?

At the outset it must be reminded that in Louisiana there are no common law crimes. And as already pointed out no act or conduct is a crime unless it is defined and made a crime clearly and unmistakably by statute. A reference to the Louisiana Criminal Code (L.S.A.—R.S. 14:7) indicates that only a defined act or conduct is intended to be made criminally punishable.

> "A crime is that *Conduct* which is defined as criminal in this code, or in other acts of the Legislature, or in the Constitution of this State." (R.S. 14:7)

Contrary to such legislative postulate, R.S. 14:107 defines as a crime the *status* of being in or near any structure or private grounds without being able to account for one's lawful presence therein. Thus, it appears in the very conception of this statutory crime that a difference is made between it and other criminal offenses.

Furthermore, the very nature of this statutory offense effects an even greater and far more significant difference

than the one just noted. Inasmuch as under the terms of this defined offense the failure of one to account for his lawful presence is *part* of the offense, one therefore wishing to avoid arrest and/or conviction must affirmatively speak up when apprehended or tried. He must, in effect, testify for—and if what he says does not convince or satisfy the arresting officer or the Court, then against—himself. He cannot remain mute, because obviously refusing to "account" for his lawful presence leaves unrefuted that part of the offense "without being able to account for his lawful presence" as would be the situation if his "accounting" proved unsatisfactory. The unusual result is that, unlike other citizens accused of crime in Louisiana, one accused of vagrancy on the count at bar cannot enjoy the presumption of innocence common to all accused of crime while simultaneously relying on the privilege of the Fifth Amendment, because his very silence supplies proof of his guilt, i.e., his failure to account for his lawful presence. In such a situation, to state it otherwise, the State has the burden merely to prove the accused's presence in a given locale. The burden then shifts to the accused to prove the innocence or validity of his presence. He is thus compelled by statute to prove his innocence. This anomalous situation obtains even though the Louisiana Supreme Court heretofore has held that it is error to compel an accused to prove his innocence. *State* v. *Rock* (1926), 162 La. 299, 110 So. 482.

There is no parallel to such a situation in Louisiana. Every person accused of crime is presumed to be innocent, L.S.A.-R.S. 15:387, and this presumption abides with the accused throughout his trial and prevails unless and until the State produces credible evidence sufficient to overcome this presumption. *State* v. *Rock*, supra. Furthermore, no person may be compelled to take the witness stand in his

own defense, Louisiana Constitution, Article 1, Section 11,[9] and even comment by the prosecution concerning the failure of the accused to take the witness stand constitutes reversible error. *State* v. *Stahl* (1959), 236 La. 362, 107 So. 2d 670; *State* v. *Bentley* (1951), 219 La. 893, 54 So. 2d 137; *State* v. *Antoine* (1938), 189 La. 619, 180 So. 465; *State* v. *Richardson* (1932), 175 La. 823, 144 So. 587; *State* v. *Sinigal* (1915), 138 La. 469, 70 So. 478. Under the vagrancy statute in question, however, these rights and privileges are denied one accused of its violation. Such an accused therefore does not stand on an equal footing with other citizens accused of crimes.

There is another aspect of this vagrancy statute which arrests attention. It appears quite convincingly that the statute effects an unreasonable classification, both as among those included in the catchall definitions of vagrancy and as between those included in these definitions and those not included therein. There appears to be no reasonable basis whatever, for example, to classify as a vagrant one who is found near or in any structure or private grounds without being able to account for his lawful presence with one engaged as a prostitute. To say the least, it is difficult to conceive how the morals or well-being of the general public could be similarly affected by one standing near a structure without an assignable reason as they could and are affected by the activities of a prostitute.

Additionally, unlike those not coming within the classification, by the very terms of the statute, petitioner and

[9] "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution. No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel confession of crime; nor shall any confession be used against any person accused of crime unless freely and voluntarily made."

those included in the definitions of vagrants are not charged with crime and prosecuted because of any offensive and defined *conduct*. They are subject to criminal prosecution simply because of a mode of life. The apparent theory justifying such legislation is that persons engaging in such a mode of existence or occupying such a defined status are potential criminals and their status breeds criminal conduct. As stated in C.J.S., supra:

> "In other words, the purpose of vagrancy statutes is to prevent crimes which may likely flow from a vagrant's mode of life by cutting out at the roots breeding places of many crimes offensive to the personal well-being of many citizens which endanger private property and threaten the peace."

While such a theory of criminal justice is not novel,[10] it is a legal anachronism repugnant to the concept of ordered liberty in our society. The very nature of such a theory fosters limitless opportunities for police abuses administered under the guise of police regulation. It constitutes a sort of carte blanche authority empowering enforcement officers to detain and arrest without warrant or probable cause, where otherwise, absent such a vagrancy statute, the same police action would offend against the guaranties of the Constitution. *Henry* v. *United States* (1959), 361 U.S. 98, 80 S.Ct. 168; *Wolf* v. *Colorado* (1949), 338 U.S. 25, 69 S.Ct. 1359. In fact, in *State* v. *Solomon* (1952), 222 La. 269, 62 So. 2d 481, where the accused was convicted of murder, the Louisiana Supreme Court relied

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[10] In 37 New York University Law Review, Number 1, pp. 102-136, in an interesting article entitled: *The Vagrancy Concept Reconsidered: Problems and Abuses in Statute Criminology*, the authors trace the historical origin of vagrancy statutes to more than five centuries ago.

upon the vagrancy statute in holding that his arrest was legal, though accomplished without the warrant required by law, inasmuch as the accused had been booked for the crime of vagrancy after his arrest. Said the Louisiana Court, at p. 485:

> "The cases of *McNabb* v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819, and *Upshaw* v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 172, 93 L.Ed. 10, relied on by counsel are not apposite here. The principle upon which those decisions are pitched does not control prosecutions under the laws of this State. *Additionally appellant was not illegally detained in the case at bar, having been charged with vagrancy in violation of L.S.A.-R.S. 14:107.*"

Such a statute furthermore empowers law enforcement officers to be selective in the enforcement of its terms. There is nothing to restrict police officers from discriminating against any particular group, ethnic, political, or racial, in administering the terms of vagrancy statutes. Furthermore, proliferation of such police abuse is as limitless as the vagaries of human imagination.

There exists no credible evidence reasonably demonstrative of the conclusion that there is any causal relationship based upon experience anent vagrancy statutes of the type under consideration, between the object of punishment and the harm from which society seeks protection, i.e., the legislative purpose. None of the authorities who have devoted their attention to this question has been able to discover evidence supporting the theoretical basis of vagrancy statutes.[11] In other words, there exists no convincing evidence that persons classified as vagrants are more prone

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[11] Ibid.

to commit crimes than others or that the status which they occupy breeds more crimes than the mode of existence of persons not included in the classification. The net result is that the theory can be sustained only if its major premise, i.e., all vagrants are potential criminals, is presumed. Such a presumption, however, is impermissible where the matter at stake is the liberty of the individual.

> "Although the Court has not assumed to define liberty with any great precision, that term is not confined to mere freedom from bodily restraint. *Liberty under law extends to the full range of conduct which the individual is free to pursue and it cannot be restricted except for a proper governmental objective.*" *Bolling* v. *Sharpe* (1954), 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884.

Discrimination of an unusual character especially suggests careful consideration to determine whether they are obnoxious to the Constitutional provision. *Louisville Gas and Electric Co.* v. *Coleman* (1928), 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770; *Hartford Steam Boiler Inspection and Insurance Co.* v. *Harrison* (1937), 301 U.S. 459, 57 S.Ct. 838, 81 L.Ed. 1223. Furthermore, as the Court appropriately observed in *Morey* v. *Doud* (1957), 354 U.S. 457, 77 S.Ct. 1344, 1350:

> "A statutory discrimination must be based on differences that are reasonably related to the purpose of the act in which it is found."

As has been suggested, there is no discoverable evidence justifying the making of differences between petitioner, who was charged as a vagrant, and those similarly situated, as opposed to other citizens who are amenable to prosecution only for defined acts or conduct. Petitioner

and those falling within the classification of vagrants nevertheless are singled out for different treatment not based on some reasonable criteria justifying the difference. Such legislation offends against the guaranties of the Constitution.

> "When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guaranties of the Constitution have been violated." *Hernandez* v. *State of Texas* (1954), 347 U.S. 475, 74 S.Ct. 667, 670, 98 L.Ed. 866.

State Has Forfeited Right to Prosecute Petitioner

Practically all of petitioner's civil rights have been violated by the enforcement officials involved in his arrest and imprisonment and sanctioned by the judicial officers to whom application for habeas corpus and writs was made.[12] In the first place petitioner was arrested without a warrant contrary to Louisiana law, R.S. 15:60, and only because his former employer instructed the Deputy Sheriffs to arrest him for trespassing (Ex. A, Tr. p. 17). He was immediately thereafter put in jail where he remained without being brought before a committing magistrate as required by law.

In Louisiana a warrant is a written order issued by a Judge to a peace officer, directing said officer to arrest a named individual and to bring him before the Judge issuing the warrant. To arrest with a warrant, the officer must have the warrant in his immediate possession, he

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[12] All pertinent statutes involved are set out verbatim in the index to this brief.

must inform the person being arrested of the warrant and of the basis for the arrest, and he must make written return on the warrant. Likewise, a person may be arrested by an officer having authoritative information that another officer holds such a warrant or when the misdemeanor is committed in the immediate presence of the arresting officer, who then and there makes the arrest. No person may be legally arrested for a misdemeanor under any other circumstances. Following an arrest, Louisiana law requires that the prisoner be taken immediately to the nearest jail or police station and booked. He must be permitted to use the telephone or send a messenger to an attorney or surety, or to family or friends for the purpose of obtaining counsel and a surety. This was denied to petitioner (Ex. A, Tr. pp. 17-20). He is entitled to be admitted to bail from the time of his arrest and he may not be placed in solitary confinement. If the arrest has been made in response to a warrant, the p[illegible]ner must be taken without delay before the magistrate designated in said warrant. If the arrest has been made without a warrant, the prisoner must be taken without delay before a committing magistrate. This too was denied to petitioner and on the contrary he was held incommunicado for almost two months (Ex. A, Tr. pp. 17-20). When a prisoner has been brought before such magistrate, he must be ordered released unless an affidavit be then made, charging him with a criminal offense. If such affidavit be made—and one was made the day following petitioner's incarceration (Ex. B, Tr. p. 21)—the magistrate has the mandatory duty of ordering a preliminary examination to be held at a designated time, in order that it may be determined by the judicial arm of the government whether the prisoner should be deprived of his liberty. Both the State and the accused have a right at any time to petition for preliminary

examination, and if at that time the prosecution is proceeding on the basis of an indictment filed or a bill of information filed, the granting of preliminary examination is entirely within the discretion of the Court, but if the petitioner is being held merely on an affidavit, the Court has no discretion but must order the preliminary examination. L.S.A.-R.S. 15:154.[13] Petitioner filed his application for preliminary examination at a time before any bill of information had been filed against him and while he was being held on the authority of an affidavit, notwithstanding which, the trial judge, though being under the mandatory duty to grant such a hearing, summarily denied petitioner's application when the District Attorney filed a bill of information against petitioner on the hearing date of the preliminary examination. The denial by these State officials of petitioner's legal rights constitutes a denial of equal protection of State laws. And, under the doctrine of *McNabb* v. *United States,* 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819, and *Upshaw* v. *United States,* 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10, seemingly the entire proceedings against petitioner are an absolute nullity and thereby the State has forfeited its right to prosecute petitioner.

[13] "Either the State or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court."

Conclusion

Petitioner therefore respectfully requests that Louisiana Revised Statute, Title 14, Section 107, as amended by Act 454, Section 1 of 1952, be declared null and void as offending against the guaranties of the Constitution of the United States, and the arrest and attempted prosecution of petitioner be annulled and set aside and all official entries and/or judgments entered against petitioner in pursuance of the prosecution of petitioner under such statute be ordered cancelled and erased from the public records of any Louisiana court of competent jurisdiction.

Respectfully submitted,

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APPENDIX 1

Texts of Constitutional Provisions and Statutes Involved

The Fourteenth Amendment to the Constitution of the United States:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Excerpts From Louisiana Constitution and Statutes

Louisiana Constitution

Article 7, § 10:

The Supreme Court shall have control of, and general supervision over all inferior courts and shall have further jurisdiction as follows:

APPELLATE JURISDICTION: CRIMINAL. The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed.

Article 7, § 42:

GRAND JURY: DISTRICT JUDGES, AUTHORITY IN CRIMINAL CASES

* * * * * * *

The district judges shall have authority to try at any time misdemeanors, and, when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor, and to receive pleas of guilty in all cases less than capital.

Article 7, § 83:

ORIGINAL JURISDICTION. The Criminal District Court for the Parish of Orleans shall have exclusive jurisdiction of the trial and punishment of all crimes, misdemeanors and offenses committed within the Parish of Orleans, the jurisdiction of which is not vested by this Constitution in some other court.

APPELLATE JURISDICTION. It shall have appellate jurisdiction of all cases tried before the Juvenile Court for the Parish of Orleans and the Recorders' Courts of the City of New Orleans, as provided in this Constitution. Said appeals from the Recorders' Courts shall be on the law and the facts and shall be tried upon the records made and the evidence offered in said courts by the Judge to whom the appeal shall be allotted. In all cases tried before the judges of the said Criminal District Court in which an appeal does not lie to the Supreme Court, and in cases tried before the Juvenile Court, an appeal shall lie on questions of law and fact to two or more of the judges of the said Criminal District Court, as may be prescribed by said Court; and the Court shall adopt rules regulating the manner of taking and hearing and deciding said appeals.

Louisiana Revised Statutes

14:107:

The following persons are and shall be guilty of vagrancy:

1. Habitual drunkards; or
2. Persons who live in houses of ill fame or who habitually associate with prostitutes; or
3. Able-bodied persons who wander about and solicit alms as a business, provided that this article shall not apply to persons soliciting for bona fide religious, charitable or eleemosynary organizations with the authorization thereof; or
4. Habitual gamblers or persons who for the most part maintain themselves by gambling; or

5. Able-bodied persons without visible lawful means of support who do not seek employment; or

6. Able-bodied persons who obtain their support gratis from persons receiving old age pensions or old age assistance from the State; or

7. Persons who frequent the street habitually at late or unusual hours of the night, or who loiter around any public places of assembly without visible or lawful business; or

8. Persons who are found in or near any structure, movable, vessel, or private grounds, without being able to account for their presence therein; or

9. Prostitutes.

Whoever commits the crimes of vagrancy shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both.

15:49:

A warrant of arrest is an order in writing, issued and signed by a competent judge in the name of the State, stating the crime or violation of ordinance charged against the person to be arrested and commanding a peace officer to deliver him to answer to said charge.

15:50:

The warrant shall specify the name of the person to be arrested, but if it be unknown he may be designated by any name. The warrant shall be dated and shall set out the official capacity of the judge issuing and signing the same. If the charge be such that the accused is entitled to a preliminary examination, the warrant shall direct that he be brought before the judge having authority to sit as a committing magistrate, otherwise that he be brought before the judge having trial jurisdiction.

15:52:

Every judge vested with criminal jurisdiction, whether as a trial judge or as a committing magistrate, and every judge vested with jurisdiction to try violators of parochial or municipal ordinances, has authority to issue a warrant for the arrest of any person found within the state charged with a breach of the peace or with crime, whether such person be charged with the commission of a crime within the state or with being a fugitive from the justice of another state or of a foreign country, and for the arrest of all persons charged with the violation of any ordinance; provided that no warrant of arrest shall issue except upon the indictment by a grand jury, the information of the district attorney, or the affidavit of a credible witness setting out distinctly the charge against the person to be arrested.

15:53:

Whenever any person shall be accused by the oath of any credible person of any crime, breach of the peace or violation of any parochial or municipal ordinance, the judge before whom the accusation is brought shall receive the complaint and cause a warrant to issue, directing that the accused be arrested and brought before the court of competent jurisdiction.

15:54:

Every judge, whether of trial or of committing jurisdiction, shall, before issuing the warrant of arrest, require of the person making an affidavit of the commission of any crime or the violation of any ordinance, a statement, to be embodied in the affidavit, specifying to the best of the knowledge and belief of the affiant, the name and surname of the offender and of the person injured, and the date and place of the offense.

15:59:

Except as otherwise provided under this Part, no arrest can legally be made, except in obedience to a legal warrant.

15:60:

Any peace officer may, without a warrant, arrest a person:

(1) For the commission of any felony or misdemeanor committed in his presence;

(2) When such person has committed a felony although not in the presence of the officer;

(3) When a felony in fact has been committed and he has reasonable cause to believe that such person has committed it;

(4) When he has reasonable cause to believe that a felony has been committed and reasonable cause to believe that such person has committed it;

(5) When he has received positive information by written, telegraphic or other authoritative source that another officer holds a warrant for such arrest.

15:62:

To justify an arrest for any misdemeanor, breach of the peace, or violation of any ordinance committed or attempted in the presence of him making the arrest, said arrest must be made at the time of such commission, or of such attempt, for, except for felony, no one can legally make an arrest, without a warrant, for any thing previously done or attempted in his presence.

15:70:

When arresting a person, without a warrant, the officer making the arrest shall inform the person arrested of his authority and the cause of the arrest, except when the person arrested is engaged in the commis-

sion of a criminal offense, or if he flees or if he forcibly resists arrest before the officer has time to inform him. The return of the officer making the arrest, indorsed upon the warrant upon which the accused person shall be subsequently held, affirming compliance with the provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause.

15:77:

Every peace officer making an arrest or who shall have turned over to him any person arrested by a private person and any person making an arrest of another person shall immediately conduct the person arrested to the nearest jail or police station and then and there cause to be entered on the book to be kept for that purpose the name of the prisoner and the crime or violation of ordinance charged against him and for which he shall have been arrested. Said book shall always be kept open for the inspection of the public, and the officer in charge shall furnish without cost a certified copy of the entry thereon to any person desiring such copy.

All persons arrested shall, from the moment of their arrest, be entitled to confer with counsel, and shall not be placed in solitary confinement in any jail or precinct station, and denied the right to confer with counsel. They shall be given the right and privilege of using the telephone in the jail or station or send a messenger for the purpose of communicating with counsel and with his friends and relatives for the purpose of securing counsel. They shall also have the right and privilege of using the telephone in the jail or station or send a messenger for the purpose of communication with any person, firm or corporation in order to secure their release by bail or parole and such person, firm or corporation when contacted or communicated with shall have the right to visit said arrested person within a reasonable time, if not charged with a crime in which no release or bail is allowed by law.

No peace officer or other person making an arrest shall neglect, fail or refuse to immediately conduct the person arrested to the nearest jail or police station and immediately cause him to be booked. Such neglect or refusal shall be prima facie evidence and proof of violation of this Section.

Whoever violates this Section shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not more than two years, or both.

This section shall not be construed as in any wise intending to deprive or divest the superintendent of police of the City of New Orleans of the right to release upon his own responsibility any prisoner, at any time previous to his actual arraignment in open court. As amended Acts 1950, No. 386, § 1.

15:78:

The judges and other magistrates of all courts having criminal jurisdiction throughout the State, are hereby vested with jurisdiction over any person arrested for any crime or for the violation of any ordinance under and within their respective jurisdictions, from the moment said person is arrested and taken into custody by a peace officer, with power and authority to immediately parole or release on bail such person so arrested over whom they have jurisdiction as aforesaid, provided the offense charged be bailable.

15:79:

As soon as the person arrested without a warrant shall have been brought before the judge, the judge shall, unless an affidavit be then made setting forth the charge against the prisoner, order him forthwith to be discharged from custody.

15:80:

When any person shall have been arrested without a warrant, the peace officer, after he shall have caused him to be booked, shall bring him, without unnecessary

delay, if the charge be such as to entitle the accused to a preliminary examination, before the judge having authority to sit as a committing magistrate in the case, otherwise, before the judge having trial jurisdiction thereof.

15:81:

As soon as the person arrested without a warrant shall have been brought before the judge, the judge shall, unless an affidavit be then made setting forth the charge against the prisoner, order him forthwith to be discharged from custody.

15:82:

When the person arrested, with or without a warrant, shall be brought before the judge, the judge shall remand him for preliminary examination, if the accused be entitled to such examination, otherwise for trial, and shall, if the charge be bailable, order the release of the accused upon such bail as the judge shall then and there fix; if the said bail be not furnished or if the crime charged be capital, the judge shall commit the accused to prison until delivered in due course of law; provided that every commitment shall be signed by the judge, shall substantially set out the offense of which the accused is charged, and, if the offense be bailable, shall fix the amount of bail . . .

15:91:

The order admitting to bail may issue on the judge's own motion; it must be in writing, it must fix the amount of the bail-bond, designate the officer authorized to accept the sureties tendered by the person to be bailed and must be signed by the judge of the court before which it is the legal duty of the person to be bailed to appear; provided that whenever a committing magistrate shall commit any accused to the district court for trial, or shall bind over any one to appear before the district court as a witness, such

committing magistrate is authorized to fix the amount of the bail-bond for the appearance of such accused or of such witness before the district court at such time as it shall be the legal duty of such accused or of such witness to appear, nor shall any other or additional bail be required in the district court, unless the judge of such court shall deem other or additional bail necessary.

15:92:

The order admitting to bail is a special order, and the amount of bail must be specially fixed in each case, hence any general order authorizing the sheriff, or other officers, to take bail and fixing the amount thereof at a certain sum for particular crimes is illegal, and any bail-bond taken under such an order is of no effect.

15:113:

The writ of habeas corpus is an order in writing, issued in the name of the State, by a judge of competent jurisdiction, and directed to the person who has another in his custody, or detains him in confinement, commanding him to bring before the judge the person thus detained, at the time and place appointed in the writ, and to state the reason for which he thus keeps him imprisoned and deprived of liberty.

15:121:

The competent judge to whom the petition is presented shall immediately grant a writ of habeas corpus, unless it appear by the petition itself, or by the documents annexed to it, that the relator can neither be set at liberty nor admitted to bail.

15:123:

The writ may be served by any person capable of giving evidence.

15:127:

The person on whom a writ of habeas corpus shall have been served, whether it be directed to him or not, shall at the time and place designated in the writ, produce the relator and make a written return to said writ.

15:128:

The person upon whom a writ of habeas corpus shall have been served shall declare positively in his return:

(1) Whether he has or has not the relator in his power or custody, or under his restraint;

(2) If he has the relator in his power or custody, or under his restraint, he shall state the authority and cause of such imprisonment or restraint.

15:130:

If the relator be kept in custody by virtue of a judicial order the original of that order shall be annexed to the return.

15:131:

The return shall be signed by the person making it, and except when such person is duly sworn and qualified public officer, and make such return in his official capacity, it must be verified by his oath.

15:132:

The return shall be made within twelve hours after the service of the writ, or sooner, if so ordered by the writ; provided, that whenever a writ of habeas corpus shall have been granted by the Supreme Court, or by any justice thereof, upon the application of any person held in custody outside of the Parish of Orleans, the return shall be made within three days after the service of the writ or sooner if so ordered by the writ.

15:134:

At the time and place fixed in the writ for the return thereof, the judge shall proceed summarily to hear such legal evidence and reasons as may be adduced, as well by the party confined as by the party confining, and shall, after a full and fair hearing, discharge or refuse to discharge the relator from custody, as the justice of the case may require.

15:135:

At the hearing of the return, the relator shall have the right, by legal evidence, to controvert or disprove any material fact or matter set forth in the return, and to prove any fact showing either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

15:137:

If, after the hearing of the return, it appears that the relator is confined by the order of some court, he can be restored to liberty only in the following cases:

• • • • • • •

(7) When the relator has been committed on a criminal charge without reasonable or probable cause.

15:154:

Either the State or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court.

15:340:

Every misdemeanor shall be triable by a judge without the intervention of a jury.

15:321:

Every application for a continuance shall be by written motion alleging specifically the grounds upon which it is based. The allegations of the motion when made on behalf of the accused, must be sworn to by him or his counsel.

15:323:

Every motion for a continuance shall be tried summarily and contradictorily with the opposite party, and unless the evidence shows to the satisfaction of the Court that mover is entitled to a continuance, the Court shall order the trial to be proceeded with forthwith.

15:341:

A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

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SUBJECT INDEX.

	Page
STATEMENT OF THE CASE	1
ARGUMENT	4
CONCLUSION	13
CERTIFICATE	14
EXHIBIT "A"	15
EXHIBIT "B"	17
EXHIBIT "C"	18

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

STATEMENT OF THE CASE.

The accused, Sidney Arceneaux, was charged with the crime of vagrancy by affidavit executed by Deputy Sheriff Mayo Decou, and the said affidavit was filed in the Fifteenth Judicial District Court of the Parish of Lafayette, Louisiana, on January 29, 1962. (R. pp. 21-22.)

Based upon said affidavit, a warrant for the arrest of the accused was issued by the committing magistrate, and the bond for the appearance of the accused was set at $50.00. (R. pp. 24-25.)

On February 28, 1962, a motion was filed in the said District Court on behalf of the accused alleging that the accused was incarcerated in the parish jail charged by affidavit with the offense of vagrancy, that no indictment or bill of information had been filed against him and praying for a preliminary examination. The motion was granted by the district judge, and a hearing was set for March 8, 1962. (R. pp. 26-27.)

The preliminary examination was continued by the Court to March 9, 1962. On March 9, 1962, the district attorney filed a bill of information in the said Court charging the accused with the crime of vagrancy. (R. pp. 28-29.) Thereupon, the district judge recalled his order for a preliminary examination, stating that he had done so because the district attorney had filed a bill of information. (R. pp. 31-33.)

On March 13, 1962, an application was made on behalf of the accused to the Supreme Court of Louisiana for writs of *habeas corpus*, and, alternatively, certiorari, mandamus and prohibition, to the district judge, in which he complains of the judge's ruling recalling his order granting the accused a preliminary examination. (R. pp. 4-16.)

On March 16, 1962, the Supreme Court of Louisiana refused writs, saying that there was no error in the ruling complained of. (R. p. 1.)

On March 28, 1962, an application was made on behalf of the accused to the Supreme Court of the United States for writ of certiorari to the Supreme Court of the State of Louisiana.

On May 31, 1962, the accused appeared in the City Court of the City of Lafayette, Louisiana, and there pleaded guilty to the charge of vagrancy, which had been transferred to said Court from the Fifteenth Judicial District Court. The accused was then sentenced to serve four months in the parish jail. The city judge gave him credit for time served, and he was forthwith discharged. (Exhibits "A" and "B.")

On June 7, 1962, the district attorney dismissed the bill of information previously filed in the Fifteenth Judicial District Court. (Exhibit "C.") This action disposed of all criminal charges of vagrancy against the accused.

On October 16, 1962, a supplemental petition was filed on behalf of the accused in the United States Supreme Court praying for writ of certiorari to the Supreme Court of the State of Louisiana.

On February 18, 1963, the Supreme Court of the United States granted writ of certiorari to the Supreme Court of the State of Louisiana.

ARGUMENT.

I.

After the Filing of a Bill of Information by the District Attorney, It Is Wholly Within the Discretion of the District Court to Grant or Refuse to Grant a Preliminary Examination to an Accused.

The application to the United States Supreme Court for writ of certiorari to the Supreme Court of the State of Louisiana is based upon the refusal of the state district judge to grant the accused a preliminary examination. The Louisiana law relating to the granting of a preliminary examination is found under Louisiana Revised Statutes 15:154, which reads as follows, to-wit:

> "Either the state or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court."

It is clear that an accused is entitled to a preliminary examination as a matter of right where he is charged with a crime by affidavit. However, when the district attorney files a bill of information against him charging him with a crime, the granting of a preliminary examination becomes discretionary with the district Court. Therefore, the district judge did not err in recalling his

order granting the accused a preliminary examination after the district attorney had filed a bill of information against the accused. No federal constitutional question is involved.

II.

The Louisiana Vagrancy Law Under Which the Accused Was Charged Is Clear and Readily Understandable and Does Not Deny the Accused Due Process and Equal Protection Guaranteed by the Fourteenth Amendment to the Constitution of the United States, Nor Does It Violate His Privileges Under the Fifth Amendment to the Constitution of the United States.

The Louisiana vagrancy law is similar to the vagrancy laws of other states and the District of Columbia, which have always been considered clear, concise and constitutional. That part of the *Louisiana Revised Statutes* (Title 14, Section 107(8)) under attack reads as follows:

> "The following persons are and shall be guilty of vagrancy:"
>
> * * * * * * *
>
> "(8) Persons who are found in or near any structure, movable, vessels, or private grounds, without being able to account for their lawful presence therein."
>
> * * * * * * *
>
> "The legislatures and municipal governing bodies acting under delegated authority may within constitutional limitations enact statutes or ordinances

defining vagrancy and imposing punishment for the offense.

"Within limitations imposed by the organic law of the state and federal governments, legislatures and municipal governing bodies, acting under delegated authority, may, by statute or ordinance, define vagrancy and impose punishment for the offense. In the main, the validity of statutes or ordinances of this character has been upheld as against objections that they were in violation of the state or federal constitutions, and the enactment thereof declared to be a valid exercise of the police power.

"Thus, statutes or ordinances have been upheld which define as vagrants, able-bodied persons who habitually load, loiter, and idle in any public place for the larger portion of their time, without regular employment and without any visible means of support; persons loitering, without legitimate reason, on or near a public school being attended by children; persons known to be pickpockets, thieves, or burglars, and having no visible means of support, if found prowling around a steamboat landing, railroad depot, place of public amusement, or at any public gathering or assembly; persons who may be found loitering around houses of ill fame, gambling houses, or places where liquor is sold or drunk, without any visible means of support; persons tramping or wandering around from place to place without visible means of support; persons found loitering, without visible means of support,

in any community; 'confidence operators'; 'common prostitutes'; 'lewd or dissolute persons'; lewd, disorderly, or dissolute persons; every person who roams from place to place without any lawful business; persons pretending to tell fortunes; professional gamblers; persons soliciting business for professional gamblers; male persons habitually associating with prostitutes and habitually loitering around houses of prostitution; and 'persons engaged in any unlawful calling.' Such statutes are not rendered invalid by failure to define therein words of general use easily understood by men of average intelligence." (91 C. J. S. 779.)

"Under some statutes, persons wandering about the streets at late hours of the night without any visible or lawful business, and unable to give a good account of themselves are vagrants.

"Under some statutes, every person who wanders about the streets at late or unusual hours of the night without any visible or lawful business, and not giving a good account of himself, is a vagrant. It is not necessary, under such a provision, that accused committed any overt act. The words 'visible or lawful business' are used in the sense of good and sufficient reason, and they refer to the reason why accused is roaming the streets rather than any business or avocation in life from which support is derived. The purpose of such statutes is to enable law enforcement officers to keep the streets clear at late and unusual hours of the night of those persons who, by reason of

being bent on serious mischief, theft, or burglary have no visible or lawful business or mission in the locality. It is not to be construed as a curfew law, forbidding persons to be on the streets after a certain hour of the night, and officers of the law have no right to compel one to account for his actions merely because that person is on the street at an unusual hour.

"On the other hand, when one's wandering and conduct on the streets at a late or unusual hour is such as to give reasonable grounds for the belief that his purpose in being on the street is not a legitimate one, the law may validly require that he be called on to account for his actions and may deem his failure to give a good account as proof that his purpose on the street is not a legitimate one. There must be an order or demand, however, to accused for an explanation of his presence in the street and replies by accused to casual or bantering questions will not support a conviction. Where all the elements of the offense as enumerated in the statute are present, a conviction of vagrancy is authorized, notwithstanding accused might be a person of fixed abode having lawful means of support.

"Under a city ordinance providing that a person found wandering or loitering without being able to give a satisfactory account of himself may be convicted as a suspicious person, a person who was in a forbidden place for a short time to consult his attorney on legal matters has been held not to be

wandering or loitering, and prior periods of loitering and incarceration in various state jails may not be cumulated for the purpose of a conviction." (91 C. J. S. 783.)

"Other persons held to be or not to be vagrants within the meaning of vagrancy statutes, and not previously considered in this section are here considered. Persons engaged in any unlawful calling; persons who beg for alms or solicit charity; persons selling intoxicating liquors; persons apprehended having on them burglar tools under circumstances from which an intent may be presumed feloniously to break and enter into any dwelling house, warehouse, storehouse, or other specified buildings; 'dissolute' persons; 'confidence operators'; persons who annoy or molest children under age of eighteen; a common drunkard; persons leading an idle, immoral, or profligate life who have no property to support them, and who are able to work and do not work; persons who annoy or molest school children, or persons who loiter about any school or public place at or near which school children attend; persons tramping or wandering around from place to place without visible means of support, or without any lawful business; one who is apt to become a public charge through his own laziness; persons found loitering about saloons or gambling houses, or tramping through the country without visible means of support; persons having 'no lawful means of support' who shall be 'habitually found prowling around any steamboat landing, railroad depot . . . store . . . or crowded thorough-

fare, car or omnibus'; persons loitering in or about any toilet, station, or station platform of a subway or elevated railway or of a railroad, and who are unable to give a satisfactory explanation of their presence; persons known to be pickpockets and having no lawful means of support, and not giving a good account of themselves when found loitering; persons lodging, or found in the nighttime in outhouses, sheds, barns, or unoccupied buildings, or lodging in the open air who do not give a good account of themselves; a person having his face painted appearing in a road, public highway, field, lot, or inclosure; females over the age of twelve who associate with vicious or dissolute persons; persons trespassing on private premises without giving a good account of themselves; and persons who shall lead an immoral course of life." (91 C. J. S. 787.)

State vagrancy statutes have been upheld as constitutional against the attack that these statutes were too broad or indefinite to state a public offense or infringing upon an individual's right of liberty. In the case of *Ex parte Cutler*, 36 P. (2d) 441 (1934), where this attack was made, the Supreme Court of California stated on page 445:

"We think that it is within the legislative power to define vagrancy, and to provide that those who indulge in pointless, useless wandering from place to place within the state, without any excuse for

> such roaming other than the impulse generated by what is sometimes denominated wanderlust, shall come within the definition, and that such individuals may properly be penalized as the statute ordains."

The Supreme Court of Illinois in the case of *People v. Klein*, 127 N. E. 72 (1920), held that a bill of information containing the following allegations was sufficient to properly charge the accused with vagrancy under the laws of Illinois, to-wit:

> ". . . that he was an idle and dissolute person and was habitually neglectful of his employment and calling, and did not lawfully provide for himself, and neglected all lawful business, and did habitually misspend his time without giving a good account of himself, and that he was known to be a pickpocket, having no lawful means of support, and was habitually found prowling in and loitering around thoroughfares, in violation of section 270 of chapter 38 of the Revised Statutes."

In the case of *City of New Orleans v. Postek, et al.*, 158 So. 553 (1935), the Court took up the question of the constitutionality of the City of New Orleans' vagrancy ordinances and held that these ordinances were within the city's police power to enact and were not void as class legislation or as denying due process of law.

The Louisiana law defining vagrancy is almost identical with the vagrancy statute passed by Congress which provides:

> "The following classes of persons shall be deemed vagrants in the District of Columbia: • • •
>
> "(8) Any person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself." D. C. Code (1940), Supp. VII, Sec. 22-3302).

This law came under the close scrutiny of the United States Court of Appeals, District of Columbia Circuit, in the case of *Beail v. District of Columbia*, 201 F. 176 (1952). The constitutionality of the law was not attacked obviously because it is so clearly constitutional. However, the Court did take up the complaint of the accused in this case that the accused under the vagrancy statutes is forced to testify against himself because he has to account for his presence. The Court of Appeals did not find any merit to his complaint.

In the case of *Eleanor R. Harris v. District of Columbia*, 132 A. (2d) 152 (1957), the Court in a vagrancy conviction said on page 154:

> ". . . It is next contended that the proof was insufficient to show that appellant was loitering or that she did not give a good account of herself. It was not the purpose of this statute to deprive persons of the use of public sidewalks, so long as they

> are used either for legitimate purposes of pleasure or business. But, when a course of conduct indicates a reasonable belief that the use of the streets is not for legitimate purposes, an officer may ask one to account for his actions."

And further, on page 155, the Court said:

> "We think the government offered sufficient evidence to sustain the conviction and having proved the required elements, the burden of proving she had lawful means of support shifted to the appellant."

The Court apparently did not feel that this statute violated the accused's rights to a presumption of innocence or his privileges under the Fifth Amendment.

III.

The Question Before the Court Is Moot Since the Accused Is No Longer in the Custody of the Respondent or Its Courts or Charged With the Offense Upon Which This Cause Is Based. *United States v. Brilliant*, 274 F. (2d) 618; Weber v. Squier, 315 U. S. 810, 62 S. Ct. 800, 86 L. Ed. 1209.

CONCLUSION.

For the reasons stated, it is urged that petitioner is not entitled to any of the relief sought by him, and,

accordingly, the judgment of the courts below should be affirmed.

Respectfully submitted,

JACK P. F. GREMILLION,
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Baton Rouge, Louisiana;

M. E. CULLIGAN,
Assistant Attorney General;

BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;

WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

CERTIFICATE.

I, M. E. Culligan, attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing brief for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereon annexed:

Simon & Trice, Attorneys at Law, 1408 Pinhook Road, Post Office Box 2241, Lafayette, Louisiana.

M. E. CULLIGAN

EXHIBIT "A."

STATE OF LOUISIANA
PARISH OF LAFAYETTE

AFFIDAVIT

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally came and appeared:

Mayo Decou, info. rec'd.

Who, being duly sworn according to law, deposes and says:

That one Sidney J. Arceneaux, w/m at the Parish and State aforesaid did, on or about the 25th day of January, 1962.

did commit the crime of Vagrancy, as defined by R. S. 14:107 (8), in he was found on private grounds belonging to Meus Lagneaux, located in the 2nd Ward of Lafayette Parish, without being able to account for his lawful presence there,

Contrary to the form and statute in such cases made and provided against the peace and dignity of the State of Louisiana.

s/ Mayo Decou

Sworn to and subscribed before me this 26th day of January, 1962

s/ Joan R. Slaughter
Dy. Clerk of Court

WITNESSES:
Accused: Parish Jail

Warrant delivered to:
Sheriff Harson
Date Jan. 26, 1962

EXHIBIT "B."

November 13, 1962

EXTRACT OF MINUTES OF COURT

STATE OF LOUISIANA
VS
SIDNEY J. ARCENEAUX Number 7304

Lafayette, La., May 31, 1962

Court met this day pursuant to adjournment. Presiding Honorable Kaliste J. Saloom, Jr., City Judge; Dallas Broussard, City Marshal; William E. Logan, Jr., Asst. District Attorney; Sidney J. Arceneaux, Defendant, in attendance.

Number 7304 A Plea of Guilty was entered by Defendant Sidney J. Arceneaux to the charge of Vagrancy Sec.(8). It was ordered that the defendant be incarcerated in the Parish Jail for a period of 4 months from actual date of Incarceration which equal to time served. Notation was made that this affidavit was transferred from District Court.

STATE OF LOUISIANA: CITY OF LAFAYETTE

This is to certify that the above and foregoing are true and correct extract of the Minutes of Court of the City of Lafayette, Louisiana, date of May 31, 1962.

WITNESS MY HAND AND SEAL of Office at Lafayette, Louisiana, this 13th November, 1962.

s/ Joan R. Slaughter
DEP. CLERK OF CITY COURT

EXHIBIT "C."

THURSDAY, JUNE 7, 1962

Court met this day pursuant to adjournment, present Hon. Carrol L. Spell, Judge presiding; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; Bertrand DeBlanc, District Attorney; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

• • • • • • • • •

14983 STATE OF LA.)
VS.) VAGRANCY
SIDNEY ARCENEAUX)

On motion of the District Attorney, leave of the Court being first had and obtained, case nolle prossed, bond of the accused cancelled and the accused released.

• • • • • • • • •

Whereupon, Court then adjourned until tomorrow, the 8th Instant, at 10 A. M.

s/ Carol L. Spell
JUDGE CARROL L. SPELL

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court of the 15th Judicial District Court in and for

the aforementioned Parish and State taken on the 7th day of June, 1962, A. D.

WITNESS MY HAND AND SEAL this 18th day of December, A. D. 1962.

s/ Mavis Romero

Mavis Romero, Deputy Clerk of Court
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

REPLY AND SUPPLEMENTAL BRIEF ON BEHALF OF SIDNEY ARCENEAUX

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Counsel for Petitioner

INDEX

SUBJECT INDEX

	Page
BRIEF FOR PETITIONER	
Supplemental Argument	1
Reply Argument	2
Conclusion	4
Appendix	5-13

AUTHORITIES CITED

CASES:

Gideon v. *Wainwright*, 83 S.Ct. 792 (1963)	3
McNabb v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 189	2
Robinson v. *California*, 270 U.S. 660 (1962)	1
Upshaw v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10	2

IN THE SUPREME COURT OF THE UNITED STATES

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REPLY AND SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER

The Vagrancy Statute of Louisiana Is Unconstitutional for the Additional Reason That It Violates the Eighth Amendment.

Petitioner respectfully submits that the vagrancy statute of Louisiana is unconstitutional for the additional reason that the provisions thereof operate to impose cruel and unusual punishment in violation of the provisions of the Eighth Amendment to the Constitution of the United States. As pointed out in the original brief (pp. 15-19), the Louisiana statute contemplates status criminality as distinguished from conduct criminality. Imposing punishment of fine and/or imprisonment on a citizen for occupying the status described as a vagrant amounts to cruel and unusual punishment and is proscribed by the Eighth Amendment. *Robinson* v. *California*, 270 U.S. 660 (1962).

Respondent's Contention That the Questions Before the Court Are Moot Inasmuch as Petitioner Has Pled Guilty to the Crime Charged Against Him Is Without Merit.

Respondent's contention that the questions before the Court are moot inasmuch as petitioner is no longer in the custody of State officials is without merit. Petitioner's plea of guilty to the charge against him represents but the consummate product of the relentless, illegal acts of State officials in their unabating efforts to deprive petitioner of his civil rights. The whole objective of keeping petitioner in jail in violation of his legal rights (described in his original brief, pp. 23-25) was to break down his will to resist—to extract a confession of guilt under duress. In this, they were successful. The plea of guilty obtained in the factual setting of this case is no less invalid, though more certain in its absolute effects, than the confessions obtained in *McNabb* v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 189, and *Upshaw* v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10, and, therefore, possesses no legal substance to stand as a bar to a redress of petitioner's grievances.

A concise statement of the pertinent facts surrounding petitioner's plea of guilty will give the Court an insight into the purposeful designs of the State officials involved.

It was while petitioner's application for writ of certiorari was pending before this Court and two months after service of a copy thereof had been made on the State officials, including the District Attorney, that the plea of guilty was extracted from petitioner.

Significantly, on May 30, 1962, petitioner's counsel submitted to the District Court Clerk for filing petitioner's motion for a speedy trial (Appendix "A"). On the following day, through the concerted efforts of a Deputy

Sheriff and the Assistant District Attorney, petitioner was taken from his jail cell to the City Court to plead guilty, on the promise that he would be released and restored to his freedom forthwith (Appendix "B", petitioner's affidavit). He was prohibited from using the telephone to call his counsel of record. And when the City Judge made inquiry in the presence of the Assistant District Attorney as to whether or not petitioner was represented by counsel, said official remained silent, though he had full knowledge that petitioner in fact was represented by counsel of record and had been for some time previous to the City Court appearance. Furthermore, it was the Assistant District Attorney who recommended to the City Judge that the sentence of the Court be limited to the time served by petitioner during his illegal detention. It was upon the basis of this recommendation that the City Judge ordered petitioner's release forthwith. Consequently, the District Attorney and the Sheriff fulfilled their promise to restore petitioner to his liberty if he entered a plea of guilty without the presence of his counsel. (See Appendix "C", affidavit of City Judge.) Thus, not only was petitioner's plea of guilty procured by the coercion of illegal confinement,[1] but he was deprived, by the acts of State officials, of the right to counsel, in violation of the Sixth Amendment operating through the Fourteenth Amendment to the Constitution of the United States. *Gideon* v. *Wainwright*, 83 S.Ct. 792 (1963).

---

[1] In support of the State's motion to dismiss heretofore filed, the State included the affidavit of Mr. Clarence Thibodeaux, a Deputy Sheriff, in which affidavit said affiant in speaking of petitioner concerning an alleged telephone conversation petitioner had with someone at his attorney's office, deposed: "I don't know who he talked to, but he said, 'if he don't do something about it today, I will go plead guilty because *I cannot stand the jail no more*'. He hung up the phone and *I put him back in jail*."

Conclusion

It appears unthinkable that such a plea should operate to render moot the paramount questions of personal liberty presented to the Court by petitioner's application in the instant action. In fact, it seems almost incredulous that such a plea should be urged upon the Court by any responsible State official. In any event, petitioner respectfully submits the legal questions at bar are not moot, and the relief requested by petitioner should be granted.

Respectfully submitted,

SIMON & TRICE
Attorneys at Law
1408 Pinhook Road
Post Office Box 2241
Lafayette, Louisiana

By J. MINOS SIMON

APPENDIX "A"

FIFTEENTH JUDICIAL DISTRICT COURT

LAFAYETTE PARISH, LOUISIANA

Docket Number 14983

STATE OF LOUISIANA,

vs.

SIDNEY ARCENEAUX.

MOTION FOR SPEEDY TRIAL

Now, through undersigned counsel, comes Sidney Arceneaux, accused in the captioned prosecution, and respectfully avers:

1.

Accused was arrested on January 25, 1962, and has at all times since then been incarcerated in the Lafayette Parish Jail, being unable to furnish bail in the amount of $50.00.

2.

On February 27, 1962, counsel for accused presented an application for preliminary examination and, alternatively, for a writ of habeas corpus and the court signed the order granting preliminary examination, and habeas corpus hearing, both to be heard on March 8, 1962, but on said date,

the court summarily denied habeas corpus, and, upon motion of the District Attorney, continued the preliminary examination to the following day, March 9, 1962.

3.

When accused was called for preliminary examination on March 9, 1962, the District Attorney filed a document entitled "Answer," wherein he alleged that he had, on that same day, filed a bill of information charging accused with the offense of vagrancy, but making no mention of the fact, which did not become known by accused or his counsel until some weeks later, that said District Attorney had likewise filed a bill of information on the same day, charging accused with the offense of simple battery.

4.

Both said bills of information charge accused with having committed a misdemeanor, and on or about April 4, 1962, counsel for accused filed in each case a motion to quash, which was thereafter taken under advisement by the court, and neither motion has ever been decided by the court, insofar as accused and his counsel are aware.

5.

The court is scheduled to go on vacation as of the end of June, 1962, but has one more week of criminal term scheduled before that time, and accused avers on information and belief that there are presently days available during that week for the trial of accused.

6.

Under the constitution and laws of the United States and the State of Louisiana, accused is entitled to a fair and speedy trial, and if the court does not rule upon his mo-

tions to quash in time for any further necessary proceedings before the beginning of court vacation, accused will be forced to remain incarcerated for at least another four months.

7.

The failure of the court to rule upon said motions to quash has deprived and is continuing to deprive accused of his liberty in the event the court should find merit in said motions, and has prevented and is preventing the District Attorney from scheduling trial, in the event the court should overrule said motions, and said failure of the court has been and continues to be a denial to accused of his constitutional right to a fair and speedy trial.

8.

Accused desires and is entitled to have his aforesaid motions ruled upon without further delay.

WHEREFORE, it is prayed that the court rule upon the motion to quash heretofore filed in the above captioned cause, in order that accused may be granted speedy disposition of the charge against him, in accordance with the provisions of the constitutions and laws of the United States and the State of Louisiana.

SIMON & TRICE
Attorneys for Accused
301 E. Congress Street
Post Office Box 2241
Lafayette, Louisiana

By: PHIL TRICE

APPENDIX "B"

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Sidney Arceneaux, being first duly sworn, did depose and say:

That while in jail under the custody and control of W. E. Harson, Sheriff of Lafayette Parish, Louisiana, during the morning of May 30, 1962, said Sheriff Harson appeared at affiant's cell in the presence of one of his deputies by the name of Thibodeaux and inquired as to how affiant was feeling. Affiant responded that he was not feeling too well. Thereupon, said Sheriff asked affiant if he was interested in getting out of jail. Affiant stated that he was. Said Sheriff then advised affiant that if he would plead guilty to the charge that was lodged against him, he could arrange it with the City Court to let him go home. Affiant requested to be released without having to plead to any charges, but the said Sheriff stated that this was not possible. Affiant advised said Sheriff that he was anxious to get out of jail and, if it were necessary to plead guilty to the charge, he would do so. Said Sheriff said he would then make the arrangement with the Judge to get him released as soon as he pled guilty.

Affiant further states that he requested permission then to talk to his counsel by telephone, but the Sheriff refused to permit him to call his attorney, J. Minos Simon. The Sheriff said that affiant had already used the telephone too often to call his attorney, as it was.

Affiant further states that the following day he was brought before the City Court at Lafayette, Louisiana. Just before leaving to go to the City Court, affiant again

requested permission of the said Sheriff to call his counsel, but again the Sheriff refused to allow him to use the telephone for that purpose.

Affiant further states that he was thereupon transported in the company of one of the deputies to the City Court at Lafayette and appeared before Honorable Kaliste Saloom, City Judge. The presiding Judge called for affiant to appear before said Court and, upon appearing, he was asked by the presiding Judge if he had a lawyer but he responded to the Judge that he had a lawyer but the Sheriff would not let him call his lawyer. The presiding Judge asked if he wanted to plead guilty, to which affiant responded that he did. The presiding Judge further inquired how long he had been in jail and he advised that he had been in jail for 4 months and 8 days, whereupon the Judge advised him that he had been in jail long enough and accordingly released him.

Immediately thereafter he was brought back to the Parish jail where he secured his belongings and left. After he left he called by telephone his counsel's office but his retained counsel, J. Minos Simon, was not in the office and he thereupon talked to counsel's secretary, advising that he had pled guilty and he was released from jail.

Affiant further states that sometime ago, not recalling exactly when, but approximately 2 or 3 or even 4 months ago said Sheriff met affiant's parents at Webb's Neighborhood Lounge in Lafayette, Louisiana, and advised affiant's parents that he, said Sheriff, wanted to talk to affiant and that said parents should tell affiant to appear at the Sheriff's office as early as possible. Shortly thereafter, affiant appeared at the office of said Sheriff, whereupon he was presented with papers that the Sheriff insisted that he sign. Affiant states that said Sheriff said that the contents of the papers that he wanted affiant to sign were such that

it would indicate to the Sheriff's deputies that they were to leave him alone and not arrest him in the future and that affiant had to sign said papers. Affiant states that he does not know how to read or write the English language and therefore does not know what the contents of said papers were, but believing the representations made by said Sheriff, affiant did sign said papers.

Further, affiant states that said Sheriff on or about June 1, 1963 appeared at the home of your affiant's parents to inquire concerning whereabouts of affiant. Affiant's parents advised said Sheriff that affiant was working with Mr. and Mrs. Elmo J. Leger, Route 1, Box 467, Duson, Louisiana. Thereafter on June 4, 1963, said Sheriff appeared at the home of Mr. and Mrs. Elmo Leger to talk to affiant. Said Sheriff did talk to affiant in the presence of Mr. Elmo Leger, at which time said Sheriff was in the company of one of his deputies. At this time the Sheriff stated to affiant that affiant should sign papers which said Sheriff wanted affiant to sign after which he wanted affiant to appear at his attorney's office at Lafayette, Louisiana, to inform said attorney that he, affiant, desired to dismiss his suit pending before the United States Supreme Court. Said Sheriff further stated that if he did not do this, then it would then become necessary for said Sheriff to again arrest affiant and for affiant again to stand trial. Affiant further states that during the course of said conversation, said Sheriff told affiant that affiant's attorney had been on his back for quite a while, and that affiant should release said attorney and discontinue his lawsuit.

This statement was signed by affiant after the same was read to him by Lorene Tylock, one of the subscribing witnesses to this document, and after having said statement read to him, he did acknowledge under oath that the same

was entirely true and correct, on this 28th of June, 1963, at Lafayette, Louisiana.

/s/ SIDNEY ARCENEAUX
Sidney Arceneaux

Witnesses:

/s/ LORENE TYLOCK

/s/ BARBARA B. SULLIVAN

/s/ J. MINOS SIMON
Notary Public

APPENDIX "C"

STATE OF LOUISIANA
PARISH OF LAFAYETTE

AFFIDAVIT

BEFORE ME, the undersigned authority in and for the State and Parish aforesaid, personally came and appeared Kaliste J. Saloom, Jr., who being first duly sworn did depose and say:

He is the Judge of the City Court of Lafayette, and was presiding in said Court on May 31, 1962. Assistant District Attorney William E. Logan presented to the Court criminal charges against Sidney J. Arceneaux of Rayne, Louisiana. The charges were transferred from the docket of the 15th Judicial District Court in and for the Parish of Lafayette, Louisiana. One charge was for the crime of vagrancy and the second charge was for commission of an act of simple battery. The accused was brought to the City Court by a Deputy Sheriff of the Parish of Lafayette. The accused was presented to the Court and asked by the presiding judge whether or not he was represented by legal counsel. The accused answered that he was not represented by legal counsel and was appearing for himself. This statement was made by the accused in the presence of the Court, the Assistant District Attorney, the Clerk and others present at the regular session of the City Court. The accused was then arraigned and entered a plea of guilty to the misdemeanor charges. On recommendation of the Assistant District Attorney and upon suggesting to the Court that the accused had been incarcerated in the Parish Jail, awaiting trial in the District Court and being unable to furnish appearance bond, for a period of four months, the sentence

of the Court, delays being duly waived, was to impose upon the accused the time served in jail awaiting his trial. The sentence having been satisfied, the accused was forthwith ordered released from custody.

A week or so later, Attorney Phil Trice of the firm of Simon & Trice called the affiant to inquire as to the Arceneaux cases and asked if affiant had been informed that the firm of Simon & Trice was employed to represent him, to which inquiry affiant replied that he was not so informed at the time of arraignment and sentence.

Since several months have passed, affiant does not recall minutely all of the details and persons present at the court session.

/s/ KALISTE J. SALOOM, JR.
Kaliste J. Saloom, Jr.

Sworn to and subscribed before me
this 7th day of March, 1963.

/s/ LEORA D. FUSEBER
Notary Public

Office-Supreme Court, U.S.
FILED
JAN 31 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana;
M. E. CULLIGAN,
Assistant Attorney General,
New Orleans, La.;
BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;
WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

SUBJECT INDEX.

	Page
STATEMENT	1
SUPPLEMENTAL ARGUMENT	2
CONCLUSION	10
CERTIFICATE	12
EXHIBIT "1"	13
EXHIBIT "2"	15
EXHIBIT "3"	17
EXHIBIT "4"	19

IN THE

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SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT, STATE OF LOUISIANA.

May It Please the Court:

STATEMENT.

During the presentation of this case, this Honorable Court, through its chief justice, requested counsel for respondent to file a supplemental brief on the question of what remedies, if any, are now available to the petitioner, Sidney Arceneaux, in state court, based upon the complaint made by him relative to his incarceration and subsequent plea of guilty to the crime charged.

Permission of the Court was also granted to respondent to file a supplemental brief in support of respondent's contention that the issue presented by petitioner is moot.

REMEDIES AVAILABLE TO PETITIONER.

Petitioner, Sidney Arceneaux, was charged in state court with the crime of vagrancy, a misdemeanor under the laws of Louisiana. He pleaded guilty to said charge and was sentenced to four months in jail. The judge gave him credit for time served, and he was forthwith discharged. He is no longer in the custody of the respondents or its courts.

Petitioner alleges illegal detention, denial of right to counsel, and illegal procurement of guilty plea, all of which petitioner alleges was done by the illegal acts of state officials. These allegations are denied by respondent. The validity of these claims was never determined in any judicial proceedings in any court.

WHAT REMEDIES ARE NOW AVAILABLE TO PETITIONER TO ESTABLISH THESE ALLEGED FACTS AND TO SECURE REDRESS?

It is submitted that petitioner has no remedies at this time. After his plea of guilty and sentence he had a right of appeal to the district Court, where he would have received a trial *de novo* in accordance with the provisions of *Louisiana Revised Statutes*, Title 13, Section 2214, which provides in part:

> ". . . Persons sentenced to a fine or imprisonment by the city court shall be entitled to an appeal

> to the district court of the parish of Lafayette upon giving good and solvent security in favor of the city judge for fine and costs of court. The appeal in such cases shall be tried de novo without a jury in the district court."

He had ten (10) judicial days after sentence to move for his appeal in accordance with the provisions of *Louisiana Revised Statutes*, Title 15, Section 542, the pertinent part of which reads as follows:

> "The party desiring to appeal in a criminal case shall make in open court a motion for an appeal verbally or in writing, within ten judicial days after the rendition of the judgment complained of; . . ."

Had petitioner taken advantage of his right of appeal, he would have received a new trial in the district Court. There he would have been given an opportunity to allege and prove the illegal acts which he says were committed by the state officials in connection with his incarceration and plea of guilty. However, he permitted prescription to set in without taking any action. He is now barred from asserting these claims.

Counsel for petitioner herein had immediate knowledge of petitioner's plea of guilty as well as his release from jail. This is shown by an affidavit of petitioner submitted to this Court as Appendix "B" attached to his reply and supplemental brief filed herein. This affidavit which counsel submitted for this Court's consideration contained the following paragraph on page 9:

> "Immediately thereafter he was brought back to the Parish jail where he secured his belongings and left. After he left he called by telephone his counsel's office but his retained counsel, J. Minos Simon, was not in the office and he thereupon talked to counsel's secretary, advising that he had plead guilty and he was released from jail."

Counsel for petitioner in support of his own case admits that petitioner gave his office ample notice of the guilty plea to permit him to move for an appeal to the district Court and there receive a new trial. He has, therefore, lost all his rights in state court by his failure to take advantage of his right to a new trial in the state district Court by moving for an appeal within the ten judicial days from the date of imposition of sentence.

Petitioner may seek a pardon. *Constitution of Louisiana*, Article 5, Section 10, and *Louisiana Revised Statutes*, Title 15, Section 572. This is not really a remedy, since the obtaining of a pardon is not a matter of right. It is rather a matter of equity, or, as has been said, it is a matter of grace. However, a pardon from the governor would completely erase the conviction and obliterate the offense. It is a remission of guilt. A prerequisite to the granting of a pardon by the governor is a recommendation by the Pardon Board which is based upon a hearing. There the petitioner has the opportunity of presenting and proving all of the facts alleged in his complaint.

Petitioner also has his civil remedy if he can prove the violation of his civil rights by public officials.

Respondent wishes to point out that public officials in Louisiana are required by law to conduct themselves in a manner befitting their office. Article 9, Section 1, of the Constitution of Louisiana provides for the removal of public officials for gross misconduct. *Louisiana Revised Statutes*, Title 14, Section 134, provides a criminal penalty for malfeasance in office by public officials.

Constitution of Louisiana, Article 9, Section 1, provides:

> "All state and district officers, whether elected or appointed, shall be liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness."

Louisiana Revised Statutes, Title 14, Section 134, provides:

> "Malfeasance in office is committed when any public officer or public employee shall:
>
> "(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
>
> "(2) Intentionally perform any such duty in an unlawful manner; or
>
> "(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

THE QUESTION BEFORE THIS COURT IS MOOT SINCE THE ACCUSED IS NO LONGER IN THE CUSTODY OF THE RESPONDENT OR ITS COURTS OR CHARGED WITH THE OFFENSE UPON WHICH THIS CASE IS BASED.

In his petition to this Honorable Court the petitioner "prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana, entered on March 16, 1962, refusing writs of habeas corpus, certiorari, mandamus and prohibition, with respect to the rulings and judgment of the Fifteenth Judicial District Court in and for the Parish of Lafayette, Louisiana, on March 8 and 9, 1962."

The rulings of the state district judge complained of were to the effect that after the filing of a bill of information by the district attorney it is wholly within the discretion of the district judge to grant or refuse to grant a preliminary examination. Respondent not only maintains that this ruling is correct but also that it does not present any federal constitutional question.

Petitioner further claims he was denied a writ of *habeas corpus* by both the state district Court as well as the Louisiana Supreme Court. It is denied, however, that he ever made proper application for *habeas corpus*.

The United States Constitution provides that the federal power shall extend to cases and controversies.

This means that this Court decides actual controversies by a judgment which can be carried out and does not give opinions upon moot questions or abstract propositions, or declare principles of law which cannot affect the matter at issue in the case before it.

In the case of *Parker v. Ellis* (1960), 362 U. S. 574, 80 S. Ct. 909, petitioner had been convicted of forgery in a Texas district court. He sought a writ of *habeas corpus*. When the case was heard in the United States Supreme Court on certiorari, the petitioner had completed his sentence and had been released from prison. The Court remanded the case to the Court of Appeals to vacate its judgment and with directions to the district court to dismiss the application for a writ of *habeas corpus*. The Court held that it will not adjudicate a matter in which its judgment cannot operate, and, as the only judicial relief provided for by the statute authorizing the issuance of the *habeas corpus* writ is the discharge of the prisoner or his admission to bail, the issue has become moot.

In *Mills v. Green* (1895), 159 U. S. 651, the United States Supreme Court announced the principle of jurisdictional abnegation where moot questions or abstract propositions are presented to the Court. In that case the Court said on page 653:

> "The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

In *St. Pierre v. United States* (1943), 319 U. S. 41, 63 S. Ct. 910, the Court held that since petitioner's sentence had terminated before the case was heard before the Court, the issue became moot and the writ of certiorari was dismissed.

A thorough discussion of cases where moot questions were presented to this Court is to be found in the *Louisiana Law Review*, Volume 21, page 260.

The law relating to disabilities suffered generally by persons convicted of crime is found in Article 8, Section 6, of the Constitution of Louisiana and under Louisiana Revised Statutes, Title 15, Section 572.1. These disability provisions apply only to felonies.

Constitution of Louisiana, Article 8, Section 6, reads as follows:

> "The following persons shall not be permitted to register, vote or hold office or appointment of honor, trust, or profit in this State, to-wit: Those who have been convicted of any crime which may be punishable by imprisonment in the penitentiary, and not afterwards pardoned with express restoration of franchise; those who are inmates of any charitable institution, except the Soldiers' Home; those actually confined in any public prison; all interdicted persons, and all persons notoriously insane or idiotic, whether interdicted or not. The provisions of this Section concerning the right to register and vote shall not apply to inmates of the United States Marine Hospital No. 188 at Carville."

Louisiana Revised Statutes, Title 15, Section 572.1, reads as follows:

> "No person who has been convicted of any crime, either in any of the courts of Louisiana or in any of the courts of the United States, which may be punishable by imprisonment in the penitentiary and who has not been afterward pardoned with express restoration of franchise shall be permitted to register, vote, or hold office or appointment of honor, trust, or profit in the state of Louisiana. Whoever registers, votes, or remains in office illegally after having been convicted of a crime punishable by imprisonment in the penitentiary shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for not less than thirty days nor more than six months, or both."

The heavier penalties imposed upon multiple offenders apply only to felonies and, therefore, would not affect the petitioner. The multiple offender law is found under Louisiana Revised Statutes, Title 15, Section 529.1.

Petitioner, having pleaded guilty to the crime of vagrancy, a misdemeanor under the laws of Louisiana, having been sentenced to a jail term and having served the sentence, will suffer no further disabilities or penalties.

In view, however, of some of the questions raised during oral argument of this case, as well as some of the language found in the cases involving moot issues, it is felt that this Court's attention should be directed to the public records of Louisiana, which show that petitioner

is a felon presently incarcerated in the state penitentiary, where he is serving a term of two years on each of three forgery convictions, felonies under the laws of Louisiana. By said conviction, petitioner has incurred all of the disabilities provided by Louisiana law. Respondent attached to this brief a copy of petitioner's conviction, dated September 12, 1963, recorded as a public record in the office of the Clerk of Court for the Fifteenth Judicial District of Louisiana in and for the Parish of Lafayette, marked Exhibit "1." Respondent also feels the attention of this Court should be directed to the public records of Louisiana, which show that petitioner has suffered the same disabilities since March 16, 1956, when he was sentenced to serve a term of three years in the state penitentiary for the crime of simple burglary, a felony under the laws of Louisiana. Respondent attached to this brief a copy of petitioner's convictions, dated March 16, 1956, recorded as a public record in the office of the Clerk of Court for the Fifteenth Judicial District of Louisiana in and for the parish of Acadia, marked Exhibits "2," "3" and "4."

The records of petitioner's felony convictions are submitted to this Honorable Court for its information only to the extent that the absence of felony convictions might affect the question of mootness.

CONCLUSION.

For the reasons stated in this supplemental brief, as well as in the original brief, it is urged that petitioner is not entitled to any of the relief sought by him. Ac-

cordingly, the motion to dismiss filed by respondent before this Honorable Court should be maintained.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana;
M. E. CULLIGAN,
Assistant Attorney General,
New Orleans, Louisiana;
BERTRAND DE BLANC,
District Attorney,
Fifteenth Judicial District Court,
Lafayette, Louisiana;
WILLIAM E. LOGAN, JR.,
Assistant District Attorney,
Attorneys for Respondent.

CERTIFICATE.

I, M. E. Culligan, attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing brief for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereon annexed:

Simon & Trice, Attorneys at Law, 1408 Pinhook Road, Post Office Box 2241, Lafayette, Louisiana.

M. E. CULLIGAN

EXHIBIT "1"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell; Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION
FORGERY

16649
STATE OF LOUISIANA
VS.
SIDNEY ARCENEAUX

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana.

* * * * * *

STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "2"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell; Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION

FORGERY

16650)
STATE OF LOUISIANA)
VS.)
SIDNEY ARCENEAUX)

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana; said sentence to run concurrent with sentence in # 16649.

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STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, A. D., 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "3"

THURSDAY, SEPTEMBER 12, 1963

Court met this day pursuant to adjournment, present Hon. Jerome E. Domengeaux; Hon. Carrol L. Spell, Bertrand DeBlanc, District Attorney; J. H. DiCarlo, Deputy Sheriff; Loreene R. Montgomery, Court Reporter; and Carolyn D. Walker, Deputy Clerk of Court, being in attendance.

JUDGE DOMENGEAUX PRESIDING: CRIMINAL SESSION

FORGERY

16651)
STATE OF LOUISIANA)
VS.)
SIDNEY ARCENEAUX)

The accused was present in open Court in proper person, was regularly arraigned and pleaded guilty to the charge preferred against him. The accused informed the Court that he was not represented by counsel and that he did not desire to have the Court appoint counsel to represent him as he wished to plead guilty. The accused waived legal delays and requested the Court to sentence him forthwith. It was judicially established that the accused is twenty-eight years of age. It was considered by the Court that the accused be sentenced to serve a term of two years at hard labor in the State Penitentiary at Angola, Louisiana; said sentence to run concurrent with sentence in # 16649.

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STATE OF LOUISIANA
PARISH OF LAFAYETTE

THIS IS TO CERTIFY that the above and foregoing is a true and correct EXTRACT of the Minutes of Court taken the 12th day of September, A. D., 1963.

Witness the Honorables, Judges of the said Court, this 12th day of September, A. D., 1963.

s/ Marilyn Champagne

DEPUTY CLERK OF COURT

EXHIBIT "4"

FRIDAY, MARCH 16th, 1956

Court met pursuant to adjournment with his Honor A. Wilmot Dalferes, Judge presiding; W. H. Burt, Dy. Sheriff; F. L. Landry, Dy. Clerk of Court and A. H. Gifford, Court Reporter.

CRIMINAL SECTION

# 7559	)	Comes the Assistant District
State of Louisiana	)	Attorney into open Court,
Vs:	)	leave of the Court being first
Sidney Arceneaux	)	had and obtained and files a

Bill of Information against Sidney Arceneaux for the crime of Simple Burglary. Now comes the accused Sidney Arceneaux into open Court. Upon being arraigned the accused enters a plea of Guilty as charged. The accused waives all legal delays and asked to be sentenced forthwith at his own request. It was judicially established that the accused is 21 years of age. It is considered by the Court that the accused be incarcerated in the State Penitentiary at Angola, La., for a term of three (3) years, at hard labor, said sentence to begin from his actual incarceration therein.

* * * * * *

State of Louisiana
Parish of Acadia

I HEREBY CERTIFY that the above and foregoing is a true and correct EXCERPT of the minutes of Court, of the 15th Judicial District, in and for Acadia Parish, Louisiana, of date, March 16th, 1956.

WITNESS MY HAND and seal of Office at Crowley, Acadia Parish, Louisiana, on this 7th day of January A. D., 1964.

s/ John D. Sittig

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Dy. Clerk of Court